



# **The Legal Profession Reform Index**

**For**

# **BULGARIA**

**May 2006**

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## INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative [hereinafter "ABA/CEELI"] developed the Legal Profession Reform Index [hereinafter "LPRI"] to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index [hereinafter "JRI"], Prosecutorial Reform Index [hereinafter "PRI"], and Legal Education Reform Index [hereinafter "LERI"] will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

## Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests, vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, which focuses on reforming the prosecutorial branch of the legal system, and the LERI, which focuses on reforming the legal education system.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other

countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocat*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *avocats aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union [hereinafter "CCBE"], there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

In the specific case of Bulgaria, however, the definitions and terminology are somewhat different. All members of the legal profession, including judges, prosecutors, investigators, *advokati*, notaries, and corporate and government counsel, who have completed their law school educations are considered *jurists*, a term commonly translated by Bulgarians into English as "lawyers." To be entitled to practice law on a regular and independent basis for multiple clients, whether in or out of the courtroom, one must be admitted to the registry of an attorneys' college and, thus, become an advocate. This term is typically translated into English as "attorney." Accordingly, in this LPRI the term "lawyer" will be used to refer to any member of the legal profession, while the term "attorney" will mean a lawyer who is an advocate and thus authorized to practice law on a regular and independent basis.

## **ABA/CEELI's Methodology**

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that

“[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism.” ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers (1990) [hereinafter “UN PRINCIPLES”], the Council of Europe’s Recommendation (2000) 21 to Member States on the Freedom of Exercise of the Profession of Lawyer (2000) [hereinafter “COE RECOMMENDATIONS”] and ABA/CEELI’s more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool<sup>1</sup> in a number of ways. For example, the LPRI borrowed the JRI’s factor “scoring” mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, LPRI, and now PRI and LERI employ factor-specific qualitative evaluations; however, these assessment tools forego any attempt to provide an overall scoring of a country’s reform progress since attempts at overall scoring would be counterproductive.<sup>2</sup> Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country’s regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a “positive” score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it is given a “neutral.”

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, PRI, and LERI there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI’s are updated – within a given country over time. There are two main reasons for borrowing the JRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

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<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

<sup>2</sup> For more in-depth discussion on this matter, see C.M. Larkin, “Judicial Independence and Democratization: A Theoretical and Conceptual Analysis,” 44 *American Journal of Comparative Law*. 605, 611 (1996).

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, non-governmental organization [hereinafter "NGO"] representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with the CEELI's JRI, PRI, and LERI, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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The LPRI assessment was conducted in March 2006, by a team led by Keith Thomas, a former ABA/CEELI liaison and legal specialist in Bulgaria. Other members of the team were Hristo



Ivanov, a Sofia attorney; Zornica Zafirova, a staff member in CEELI's Sofia office; and Violetta Kostadinova and Todor Dotchev, staff attorneys in the Sofia office. The team also received strong support from Bulgarian Country Director Marc Lassman, as well as assistance from Liaison Joanna Jacobs and staff attorney Bilyana Gyaurova-Wegertseder of CEELI's office in Sofia. ABA/CEELI Legal Analyst Dr. Carson Clements provided research, analytical assistance, substantive law provisions, and prepared and edited the report for publication. During the course of the assessment, the team met with over 60 attorneys, judges, government officials, journalists, NGO leaders, law professors and students, and reviewed numerous laws and other documents collected by CEELI or provided by those interviewed. A confidential list of the persons interviewed and a list of the documents reviewed are on file at the Washington, D.C. CEELI office.

## BULGARIA BACKGROUND

### Legal Context

The Republic of Bulgaria is a parliamentary democracy, governed by a parliament (the Narodno Sabranie, or National Assembly), president, council of ministers, prime minister, judiciary, local officials, and a Constitutional Court.

Legislative authority rests with the 240 members of the National Assembly, which is elected for a term of four years. The National Assembly's chairman proposes the agenda for each session. In addition to its general authority to pass laws, the Assembly is specifically directed to pass the state budget, establish tax rates, declare war, ratify treaties, schedule presidential elections, elect and dismiss the Prime Minister, and, on the motion of the Prime Minister, elect members of the Council of Ministers. Before it becomes law, legislation requires two votes before the Assembly. Following a vote of no confidence in the government which requires a majority of the members of the National Assembly, the government must resign. The right to initiate legislation rests with every member of the National Assembly and with the Council of Ministers.

Officially, the head of state, the President has limited powers in domestic affairs. He/she represents the state in international relations and is the commander-in-chief of the armed forces. He/she appoints the high command of the army and ambassadors. When Bulgaria is under imminent threat, he/she may declare war. He/she may veto bills, but that veto may be overridden by an absolute majority vote of the National Assembly. The President also appoints the presidents of the Supreme Court of Cassation [hereinafter "SCC"] and the Supreme Administrative Court [hereinafter "SAC"], the Chief Prosecutor and one-third of the members of the Constitutional Court. The president is elected for a five-year term and may serve only two terms.

The Council of Ministers acts as a cabinet. It is composed of the Prime Minister, Deputy Prime Ministers, and the Ministers. While the Prime Minister has overall responsibility for the administration of the government, the Council of Ministers is responsible for implementing the state's domestic and foreign policy. In particular, the Council draws up the state budget and presents it to the National Assembly. Like the Council itself, individual ministers may issue regulations in their field of competence.

The judicial branch is composed of judges, prosecutors and investigators, all of whom are deemed magistrates. All courts have related prosecutor offices. Prosecutors, who report to a Chief Prosecutor, bring criminal charges, direct pre-trial proceedings, oversee the enforcement of criminal and other penalties, and take part in civil and administrative cases as required by law. Investigators conduct investigations in criminal cases. While certain budgetary, oversight and administrative functions are shared with or controlled by the Ministry of Justice [hereinafter "MOJ"], the judiciary is largely overseen by a Supreme Judicial Council [hereinafter "SJC"], composed of 25 members including the Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General as *ex officio* members. Half of the remaining positions are filled by candidates elected by the National Assembly and the other half are elected by the magistrates themselves.

Bulgaria has a three-tier court system for civil and criminal cases. This system is composed of trial courts, either Regional or District Courts; interim appellate courts, District Courts and Courts of Appeal; and a cassation court, the SCC. Regional court decisions are appealed to the relevant District Court, and finally, to the SCC. If the original trial takes place in a District Court, its decisions are reviewed by the relevant Court of Appeals, and ultimately the SCC. The second instance is in effect a second trial court. Original trial court decisions may be appealed on any ground. The second level court may hear new evidence, including evidence existing, but not

mentioned at the original trial and evidence that came into existence after the lower court ruling. Cassation review is more limited in scope, focusing on conformity with the law. The Constitutional Court, which is not part of the judiciary, rules on constitutional issues. Challenges to administrative acts may first be made to the government body superior to that making the act and then, with certain exceptions, to the courts. Court appeals of administrative sanctions (e.g., fines) are made in all instances directly to the Regional Courts, and they may be appealed to District Courts, the final level of review. Initial court appeals of administrative acts by senior executive officials or government agencies are made directly to the SAC.

Regional Governors, who implement state policy, are appointed by the Council of Ministers. At the local level, municipal councils and mayors are elected every four years.

A Grand National Assembly, consisting of 400 elected representatives, may be convened upon a vote of two-thirds of the National Assembly. The Grand National Assembly may create a new constitution, designate changes to the territory of the nation and pass constitutional amendments affecting the form of state structure or the form of government.

The provisions of the Constitution apply directly, without need of legislative implementation. Treaties appropriately ratified also are applied directly and supersede domestic legislation.

## Historical Context

Regulation of the attorneys' profession in Bulgaria has its origin in an 1883 law that subordinated attorneys to the courts and placed broad powers in the hands of the Deputy Minister of Justice. Following widespread resistance to the law, it was repealed by royal decree a mere two months later. A subsequent effort at regulation was enacted in 1888, requiring attorneys to apply to "attach" themselves to District Courts that held the power of acceptance, or rejection, as well as disciplinary supervision. The 1888 law contemplated the possibility of elected bar councils that could carry out certain disciplinary functions, but in practice they did very little. Attorneys were still not able to organize and regulate themselves, but were instead under the control of the various District Courts.

A major shift in philosophy and practice occurred in 1925, when Bulgaria implemented a new Attorneys Act that allowed the attorneys' profession to organize itself as a self-governing, independent profession. Prior to that time, the bar was regulated primarily by the District Courts, with significant regulatory powers also exercised by the MOJ. The new legislation required attorneys to join legal entities called Attorneys' Colleges, the organs of which were Bar Councils having executive, managerial and disciplinary functions. The law established a Supreme Bar Council as the highest body governing the profession, responsible for such matters as determining the existence and locations of Attorneys' Colleges; maintaining and publishing a list of attorneys; overseeing elections and regulations of local Bar Councils; and serving as the final authority on admission and disciplinary appeals. The Bulgarian bar was fully autonomous and self-regulating.

This situation continued until the end of World War II, when a communist government took power in Bulgaria. The 1925 law was repealed in 1947 by new legislation, which kept the Attorneys' Colleges, Bar Councils and Supreme Bar Council [hereinafter "SBC"] in place, but severely limited their powers and independence. Attorneys were assigned to collectives, which held monopolies on the practice of law, taking in all clients and parceling their matters out among member attorneys. Fees were set by the collective, based on a tariff published by the MOJ, and were paid to the collective, which forwarded them (less certain deductions) to the applicable attorney. The attorney lacked a direct relationship with the client and the opportunity to negotiate a mutually acceptable fee. Disciplinary proceeding could be brought against attorneys not only by Bar Councils, but also by the courts. The proceedings themselves were conducted by Disciplinary Courts comprised not only of attorneys, but also of judges. The SBC lost its power to

hear disciplinary appeals, a power that was now exercisable by a Supreme Disciplinary Court consisting of three attorneys and three judges.

The government further tightened its reins on the attorney profession in 1952, when a new decree abolished the SBC and assigned overall management and supervisory authority over attorneys to the MOJ. This government ministry was given the power to adopt regulations for the organization and activities of the Attorneys' Colleges, Bar Councils and collectives (legal offices), to hear appeals of their decisions, and to amend or rescind their actions. In 1976, a new decree created a Central Bar Council with representatives of the Attorneys' Colleges, the MOJ and other organizations. The MOJ still retained overall administration and supervision of the bar, however, with the power to overturn or amend decisions of the attorney groups and review disciplinary appeals.

In 1989, Bulgaria was able to rid itself of communist rule, and in 1991 the principle of a free, independent and self-governing bar was enshrined in the new CONSTITUTION. A new Attorneys Act was enacted, recreating the SBC and restoring to it the overall governing authority it had originally been given in 1925. The MOJ no longer had a significant role in the administration of the profession. This act, in turn, was replaced in June 2004 by the Attorneys Act, Promulgated SG No. 55 (June 25, 2004), last amended SG No. 10 (Jan. 31, 2006) [hereinafter "ATTORNEYS ACT"].

As of January 1, 2006, there were 11,272 fully-qualified attorneys registered in Attorneys' Colleges around the country. Nearly 4,500 were members of the Sofia Attorneys' College.

## Overview of the Legal Profession

In Bulgaria, the term "lawyer" is broadly defined to include anyone who has graduated from law school, a five year program concluding with state oral and written examinations. Upon becoming lawyers, most persons pursue one of the following careers:

- Procurators or prosecutors, who oversee investigations and prosecute criminal defendants; are treated as part of the judiciary and considered magistrates;
- Investigators, who investigate crimes and are also part of the judiciary and deemed magistrates;
- Judges, also magistrates, who sit on first instance (Regional or District ) courts, appellate (District or Appeals) courts, or the highest courts in the country (the SCC and the SAC);
- Attorneys, who are members of Attorneys' Colleges and are the only lawyers who can engage in the private practice of law independently and appear in court on behalf of multiple clients;
- Non-attorney lawyers, known as legal advisors or *Juris consultants*, who may work within companies, governmental agencies, or NGOs, and may engage in the practice of law only on behalf of their respective employers;
- Notaries, who are responsible for preparing and filing certain types of contracts, loan documents and real estate ownership records, as well as for verifying signatures and documents, certifying powers of attorney and similar functions;
- Bailiffs and private enforcement agents who have powers concerning execution of judgments; and

- Recordation judges, who are appointed by the MOJ and have powers related to entries, recordings and decisions in the property registers.

For reasons outlined in the LPRI Introduction, the scope of this report is limited to attorneys, although some factors, such as those pertaining to legal education and preparation for practice, can be applied to the broader legal profession as outlined above.

The Bulgarian Constitution declares that the bar is “free, independent and self-governing”, and its organization and activities are to be prescribed by law. Constitution of the Republic of Bulgaria, Promulgated State Gazette [hereinafter “SG”] No. 56 (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter “CONSTITUTION”], Article 134. The current law requires attorneys to be admitted to and registered by an Attorneys’ College, a group administered and overseen by an elected Bar Council. Members of the Attorneys’ Colleges are subject to sanctions imposed by an elected Disciplinary Court. ATTORNEYS ACT, Articles 78 - 98. There is a separate Attorneys’ College, and a corresponding Bar Council and Disciplinary Court, for each of the 28 districts in Bulgaria with the exception of Sofia; the Sofia district and the Sofia city district share a single Attorneys’ College. There is also a comparable supervisory structure at the national level that includes a National General Assembly of Attorneys, a Supreme Bar Council (hereinafter “SBC”), a Supreme Supervisory Council [hereinafter “SSC”] and a Supreme Disciplinary Court [hereinafter “SDC”]. ATTORNEYS ACT, ARTICLES 111 – 130. The SBC has broad powers to lead, oversee, and protect the interests of the legal profession. In summary, Bulgarian attorneys are free and independent within the parameters of national legislation, subject to the direction and regulation of mandatory bar associations.

## Organizations of Legal Professionals

As noted under Overview of the Legal Profession, there is an elaborate structure of local and national mandatory bar organizations that administer, oversee, assist and regulate attorneys in Bulgaria. Because of their obligatory nature and considerable authority and influence, these organizations are by far the most important associations of attorneys in the country.

Lawyers seeking to engage in the independent practice of law as attorneys must belong to an Attorneys’ College. Each of the 28 districts in Bulgaria (except for Sofia district and Sofia city district, which are combined for this purpose) has one, and only one, Attorneys’ College, but an attorney admitted to any Attorneys’ College may practice in any district and before any forum in the country. The only limitation is that the attorney must maintain an office in the territory of the Attorneys’ College of which he or she is a member. ATTORNEYS ACT, Article 40.(6). Accordingly, Attorneys’ Colleges are mandatory organizations of attorneys, governed by their respective Bar Councils and whose members are subject to disciplinary procedures conducted by their respective Disciplinary Courts.

Locally, the Attorneys’ Colleges, meeting in General Assemblies, elect the members and chairpersons of their respective Bar Councils and Disciplinary Courts, and the members of their respective Supervisory Councils, ATTORNEYS ACT, Article 82. The powers of the Bar Council under the ATTORNEYS ACT are quite broad and include, among others, general authority to conduct the activities of the Attorneys’ College and carry out its decisions; budgetary powers, including establishment of mandatory monthly dues; organization and conduct of a bar examination; maintenance of a registry of attorneys; defense of the rights and dignity of the profession; oversight of the activities of member attorneys; investigation, referral and prosecution of disciplinary complaints; monitoring of possible unauthorized practice by non-attorneys; mediation of disputes between attorneys; improvement of professional qualifications; and registration of attorney partnerships. *Id.* at art. 89. The Supervisory Council is responsible for overseeing implementation of the budget and protection of the property of the Attorney College and for reporting improprieties to the General Assembly and the SSC. *Id.* at art. 95. The Disciplinary Court hears attorney disciplinary cases referred by the Bar Council as a court of first

instance, *Id.* at art. 97, and may impose sanctions ranging from a reprimand to a five-year suspension from practice. *Id.* at art. 133.

At the national level, the SBC has 15 voting and 10 reserve members, who are elected by a National General Assembly of Attorneys proportionally representing the various Attorneys' Colleges. The SBC has sweeping legal and persuasive power to oversee, regulate and protect the interests of the legal profession. Among the statutory powers are: adoption of an Attorneys' Code of Ethics and other regulations contemplated by the ATTORNEYS ACT; budgetary authority, including establishment of dues; ruling on election complaints and protests of decisions of local General Assemblies and Bar Councils; maintenance of a unified registry of attorneys; organization of a training center for attorneys and determination of training and continuing legal education [hereinafter "CLE"] programs; and providing opinions and proposals concerning existing or proposed legislation and administrative interpretations. ATTORNEYS ACT, Articles 121 and 122. In addition, as the country's ultimate body supervising and representing practicing attorneys, the SBC (and its chairperson individually) serves as a symbol of the attorneys profession. As such, it advocates the interests and concerns of the profession as a whole and of individual attorneys before the National Assembly, the government, the judiciary and the general public.

The National General Assembly of Attorneys also elects the members of the SSC and the members and chairperson of the SDC. The SSC inspects the financial activities of the Supreme Bar Council and controls the activities of the local Supervisory Councils. ATTORNEYS ACT, Article 127. The SDC hears appeals of decisions of the district Disciplinary Courts as a court of second instance, and tries disciplinary cases of local and national bar officials as a court of first instance; the latter, and only the latter; category of cases is subject to judicial review by way of a direct appeal to the SCC. *Id.* at arts. 129, 130.

Besides the organized bar associations, there are a number of voluntary organizations of attorneys and other lawyers, including judges, prosecutors, investigators and legal advisors, such as the Union of Bulgarian Jurists [hereinafter "UBJ"], the Bulgarian Lawyers for Human Rights Foundation [hereinafter "BLHRF"], and the Bulgarian Helsinki Committee [hereinafter "BHC"].

## SUMMARY FINDINGS

### Brief Overview of the Results

Over the past two years, the Bulgarian legal landscape has undergone significant changes as the country moves toward entry into the European Union. The National Assembly has enacted a number of laws, including new criminal and administrative procedure codes, which directly affect attorneys engaged in the practice of law. By in large, the active and progressive leadership of the Supreme Bar Council of Bulgaria [hereinafter “SBC”] has led to improvements in issues facing the legal profession. For example, the SBC has implemented a number of initiatives that are intended to improve the skills, quality and professionalism of attorneys in Bulgaria.

Overall, the legal profession in Bulgaria is free, independent, and self-regulating. The SBC has been proactive in improving the environment for legal professionals by instituting an Attorneys Ethics Code, developing a standardized Bar Examination, and creating an Attorneys’ Training Center. Still, legal education and preparation to practice law remain a significant challenge. As illustrated in the Table of Factor Correlations, Bulgaria scored positively on eight of the twenty-four LPRI factors with an upward trend in Factor 11 (Non-discriminatory Admission). The 2006 LPRI assessment also resulted in a scoring of fifteen neutral correlations, with an upward trend relating to Factor 3 (Access to Clients), Factor 9 (Qualification Process), Factor 13 (Resources and Remuneration), Factor 19 (Legal Services for the Disadvantaged), and Factor 23 (Public Interest and Awareness Programs). The 2006 LPRI assessment scored only one negative correlation, which related to Factor 8 (Preparation to Practice Law). This negative correlation was based on the quality of legal education and problems relating to post-law school preparation to practice law.

### Positive Developments Relating to the Legal Profession

- **The Constitution of Bulgaria specifically provides that the “Bar shall be free, independent, and self-regulating”.** Generally, **these assurances are honored both in the law and practice.** Attorneys practice without government oversight or interference. Attorneys are free to practice law independently or in a variety of cooperative arrangements provided for in the ATTORNEYS ACT.
- **The SBC is democratic and has actively promoted the interests and independence of the legal profession.** The SBC has taken an active role in advocating new and proposed legislation before the National Assembly that affect the legal profession and the legal system as a whole. However, the SBC still needs to become more active in advancing the role of attorneys in protecting the public interest and in drafting normative legislation affecting the public at large.
- Another significant advancement in the past two years has been **the SBC’s adoption of the ATTORNEYS ETHICS CODE.** The ATTORNEYS ETHICS CODE, **together with applicable provisions of the Attorneys Act, provides a reasonably complete set of ethical standards to govern the conduct of practicing attorneys.** However, the new ATTORNEYS ETHICS CODE has not been universally accepted, and the SBC and the local Bar Councils need to promote the importance of professional standards to foster public trust in attorneys and the legal profession through educational and training programs. The SBC has detailed procedures and a well-structured set of disciplinary courts to hear disciplinary cases. However, disciplinary enforcement remains inconsistent and uneven.
- **There are a sufficient number of qualified attorneys practicing law in all regions of the country.** In addition, **new legal aid legislation was enacted in 2006** and was being implemented at the time of the LPRI visit. While funding, administrative, and other issues

need to be addressed, the new law promises greater access to legal services by disadvantaged persons throughout the country. There are also a number of mediation centers and arbitration courts in which persons may resolve their disputes without having to resort to costly and time-consuming litigation through the court system. Under the ATTORNEYS ETHICS CODE attorneys are ethically required to advise their clients of the availability of such alternative dispute resolution (ADR) mechanisms.

- A very positive development has been **the SBC's institution of a bar examination requirement in 2004**. The bar examination, **which is both fair and comprehensive**, has filtered out less-qualified candidates and improved the overall quality of new attorneys entering the profession.
- Another significant achievement has been **the SBC's establishment of a national Attorneys' Training Center in December 2005**. Planned training programs at the new center include continuing legal education (CLE) courses in a number of substantive disciplines, as well as a basic course for new attorneys entering the profession. More broadly, the SBC and local Bar Councils continue to act impartially in administering entry to the bar and admission is non-discriminatory. Minority groups and women are well-represented in the profession, with the exception of the Roma minority.

### Remaining Concerns Relating to the Legal Profession

- Although law students must complete a five-year university program, **Bulgaria's legal education system does not fully provide graduates with the skills necessary to practice law effectively**. The causes are well-documented and include the predominantly theoretical nature of teaching and the dearth of training in the practical skills required to practice law.
- Another area of concern relates to remuneration. The 2006 LPRI assessment indicates that **attorney compensation remains generally low**. This is particularly true in smaller cities and economically distressed areas where clients frequently do not earn enough money to afford even the minimum attorneys' fees established by the profession. The proliferation of attorneys over the past 15 years and weak economic conditions remain the most significant factors in substandard attorney compensation. The minimum fees specified in the SBC's MINIMUM FEE TARIFF are low by international and EU standards. A significant development for attorneys' remuneration was the recent enactment of the LEGAL AID ACT, which established a fee schedule for legal aid services.
- Finally, **attorneys continue to have problems gaining prompt access to detained clients and sometimes experience practical hindrances in obtaining and reviewing case files**. Essentially, while the primary legislation provides a solid framework for prompt access to an attorney and private attorney-client consultations, conflicting secondary legislation and police actions continue to dilute these protections in practice. For example, the *Regulation for the Implementation of Penalties Act* requires attorney-client meetings to be conducted "on preliminary determined days and in the presence of an employee of the administration". In addition, a provision of the same regulation permits detainee telephone calls only to family members, and by implication not to attorneys. Additionally, while there has been some improvement in recent years, facilities for meeting with clients are often inadequate.



## TABLE OF FACTOR CORRELATIONS

The Bulgaria 2006 LPRI assessment reveals a developing legal profession. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI Assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Legal Profession Reform Index Factor		Correlation 2004	Correlation 2006	Trend
<b>I. Professional Freedoms and Guarantees</b>				
Factor 1	Ability to Practice Law Freely	Positive	Positive	↔
Factor 2	Professional Immunity	Neutral	Neutral	↔
Factor 3	Access to Clients	Negative	Neutral	↑
Factor 4	Attorney-Client Confidentiality	Neutral	Neutral	↔
Factor 5	Equality of Arms	Neutral	Neutral	↔
Factor 6	Right of Audience	Positive	Positive	↔
<b>II. Education, Training, and Admission to the Profession</b>				
Factor 7	Academic Requirements	Positive	Positive	↔
Factor 8	Preparation to Practice Law	Negative	Negative	↔
Factor 9	Qualification Process	Negative	Neutral	↑
Factor 10	Licensing Body	Positive	Positive	↔
Factor 11	Non-discriminatory Admission	Neutral	Positive	↑
<b>III. Conditions and Standards of Practice</b>				
Factor 12	Formation of Independent Law Practice	Positive	Positive	↔
Factor 13	Resources and Remuneration	Negative	Neutral	↑
Factor 14	Continuing Legal Education	Neutral	Neutral	↔
Factor 15	Minority and Gender Representation	Neutral	Neutral	↔
Factor 16	Professional Ethics and Conduct	Neutral	Neutral	↔
Factor 17	Disciplinary Proceedings and Sanctions	Neutral	Neutral	↔
<b>IV. Legal Services</b>				
Factor 18	Availability of Legal Services	Positive	Positive	↔
Factor 19	Legal Services for the Disadvantaged	Negative	Neutral	↑
Factor 20	Alternative Dispute Resolution	Neutral	Neutral	↔
<b>V. Professional Associations</b>				
Factor 21	Organizational Governance and Independence	Positive	Positive	↔
Factor 22	Member Services	Neutral	Neutral	↔
Factor 23	Public Interest and Awareness Programs	Negative	Neutral	↑
Factor 24	Role in Law Reform	Neutral	Neutral	↔

## I. Professional Freedoms and Guarantees

### Factor 1: Ability to Practice Law Freely

*Attorneys are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.*

CONCLUSION	CORRELATION: POSITIVE	TREND: ↔
The legal profession is independent and attorneys are able to practice freely without improper intimidation or interference from the government or other forces.		

#### Analysis/Background:

The independence of the legal profession and the ability of attorneys to practice freely are enshrined in the Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"], as well as the principal statute governing the attorneys' profession. Article 134 of the CONSTITUTION provides that:

"(1) The Bar shall be free, independent and self-regulating. It shall assist citizens and legal persons in the protection of the rights and legitimate interests thereof.

(2) The organization and procedure governing the operation of the Bar shall be regulated by statute." CONSTITUTION, ARTICLE 134. (1-2).

Furthermore, Article 2. (1) of the ATTORNEYS ACT, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] states that "The practicing of the attorney's profession is an activity stipulated by the Constitution, aimed at providing legal assistance and protection of freedoms, rights, and legal interests of individuals and legal entities. It shall be performed based on the principles of independence, exclusivity, self-governance and self-support." ATTORNEYS ACT, ARTICLE 2.(1).

The independence and self-regulating status of the profession is also reflected in the Attorneys Ethics Code, adopted by the Supreme Bar Council (SBC) (Decision # 324 of 8 July 2005) [hereinafter "ATTORNEYS ETHICS CODE"]. The introductory language of Article 1 recognizes the attorney's obligation to the public "for whom the existence of a free and independent legal profession is essential", while Article 3 provides that:

"(1) In the practice of his profession the attorney shall be independent.

(2) The attorney shall act in accordance with the law, this Ethics Code and the legitimate interests of the client, be free from all other influence, especially such as may arise from his personal interests, external pressure or outside influence, and otherwise render professional services based upon his own inner conviction.

(3) An attorney shall avoid any impairment of his/her independence and be careful not to compromise his/her professional standards in order to please his/her client, the authorities or third parties." ATTORNEYS ETHICS CODE, Article 3. (1-3).

The autonomous nature of the legal profession is reflected in other provisions of the ATTORNEYS ACT. For example, Article 29.(1) provides that the attorney is due the same respect as a judge

before the courts and other governmental authorities and is entitled to the same cooperation given to the judge. “The attorney shall be treated as a judge before the courts, the bodies of pre-court proceedings, the administrative and other authorities in the state with regard to the respect owed to him/her, and shall be entitled to rely on the same cooperation as a judge does.” ATTORNEYS ACT, Article 29.(1). In addition, under Article 31, “The attorney shall have free access to, and make references in connection with case files, demand copies of documents and be given advantage in getting information in courts, pre-trial proceeding bodies, other state authorities and bodies, and anywhere as may be necessary, based solely on his/her attorney’s capacity that he/she shall certify by presenting his/her attorney’s card”. ATTORNEYS ACT, Article 31. (See also Factor 5 Equality of Arms). Under Article 33.(1), “An attorney’s papers, files, electronic documents, computer technology and other information carriers shall be inviolable and shall not be subject to searches, copying, reviewing and seizures”. ATTORNEYS ACT, Article 33.(1).

Structurally, attorneys are required to belong to one of the 27 self-governing Attorneys’ Colleges, which are governed by locally-elected Bar Councils. The local Bar Councils organize and manage the activities of the college, monitor the budget, manage the college’s property, initiate disciplinary actions, and carry out other functions provided for by law. Additionally, each college elects a Supervisory Council which oversees the implementation of the budget and protects the property of the college. Nationally, the legal profession is governed by the elected SBC headquartered in Sofia.

Attorneys generally believe that they are able to practice their profession free of government or other influence or interference. Although attorneys sometimes face bureaucratic obstacles, such as when obtaining access to court files, such problems are not part of any governmental design to hinder attorneys’ efforts to provide competent representation to clients. In the past, government authorities, including the judiciary, were reportedly hostile on a few occasions to attorneys representing clients in the human rights area. However, this phenomenon has normalized in the last few years. Attorneys seeking access to highly-sensitive government files have reported no instances of intimidation or interference.

## Factor 2: Professional Immunity

***Attorneys are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.***

CONCLUSION	CORRELATION: NEUTRAL	TREND: ↔
Attorneys believe that they are not improperly identified with their clients’ causes and that they enjoy practical immunity for statements made on behalf of clients. However, these protections are not codified in the law.		

### Analysis/Background:

As reported in the 2004 LPRI for Bulgaria assessment, there is no law, code or normative act which prohibits the identification of attorneys with their clients or their clients’ causes. Similarly, there is no law or normative act which affords attorneys immunity for statements made in good faith or in court pleadings on behalf of their clients. The lack of immunity for attorneys is at odds with Paragraphs 18 and 20 of the United Nations *Basic Principles on the Role of Lawyers* [hereinafter “UN BASIC PRINCIPLES”], and the Council of Europe’s Recommendation (2001) 21 to Member States on the Freedom of Exercise of the Profession of Lawyer [hereinafter “COE RECOMMENDATIONS”], Principle I, para.4.

Practically speaking, attorneys do not believe that they are improperly associated with unpopular clients or their causes and respondents reported no recent instances of official sanctions having been taken against attorneys in connection with the representation of such clients. Similarly, the attorneys interviewed reported no incidents of prosecutors threatening to sanction attorneys for statements or assertions made on behalf of criminal defendants in the courtroom. Some respondents noted that a number of attorneys are reluctant to challenge the government on behalf of controversial clients or causes; however, they do not attribute this hesitancy to fear of official sanction, but rather to a desire to maintain good relations with the government authorities.

Nevertheless, the lack of clear, statutory immunity for attorneys leaves them potentially exposed to possible criminal, civil or administrative sanction. For example, under Article 145 (1) of the Criminal Code of Bulgaria, Promulgated State Gazette No. 26 (Apr. 2, 1968), last amended SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006) [hereinafter "CRIMINAL CODE"], "A person [including an attorney] who unlawfully reveals the secret of another, dangerous to his good name, which was confided to him or has come to his knowledge in connection with his vocation, shall be punished by deprivation of liberty for up to one year or a fine from BGN 100 to BGN 300." CRIMINAL CODE, Article 145 (1). In addition, under Article 146 (1), "A person who says or does something degrading to the honor and dignity of another in the presence of the latter, shall be punished for insult by a fine from BGN one thousand up to three thousand. In such a case the court may also impose the punishment of public censure." CRIMINAL CODE, Article 146(1). Under Article 147 (1), "A person who makes public a disgraceful fact about someone or ascribes to him a crime, shall be punished for slander by a fine from BGN three thousand up to seven thousand, as well as by public censure." CRIMINAL CODE, Article 147 (1). However, under Article 147(2), "The perpetrator shall not be punished if the divulged circumstances or of the ascribed crimes is proven." CRIMINAL CODE, Article 147 (2).

While attorneys have, as a practical matter, continued to enjoy immunity for statements made on behalf of clients and in court proceedings, there is no guarantee that this situation will continue. The lack of statutory immunity remains a deficiency and, therefore, warrants the neutral evaluation.

### Factor 3: Access to Clients

***Attorneys have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↑</b>
The law clearly provides for prompt access and private meetings with clients. Practical obstacles arising from conflicting administrative regulations, questionable police practices, and poor facilities remain a problem but are improving.		

#### Analysis/Background:

The Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"] and the ATTORNEYS ACT, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] establish the right of persons to have access to an attorney, particularly persons under detention. For example, Article 30.(4) of the CONSTITUTION states that "Everyone shall have the right to legal counsel from the time of detention or arraignment." CONSTITUTION, Article 30.(4).

Statutorily, Article 34.(1) of the ATTORNEYS ACT provides that “[t]he attorney shall have the right to private meetings with his/her client including when the client is under detention or imprisonment.” ATTORNEYS ACT Article 34.(1). The same legislation specifies that the attorney need only present his/her attorney’s card issued by the Attorneys’ College in order to gain access to the client. *Id.* at art. 34.(4).

The criminal statutes reiterate and expand on these rights. For example, Article 97 of the Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006) [hereinafter “CRIMINAL PROCEDURE CODE”] provides that “defense counsel may join criminal proceedings from the moment an individual is detained or has been constituted in the capacity of the accused party.” CRIMINAL PROCEDURE CODE, Article 97 (1). In addition, Article 97 (2) further states that “the body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defense counsel, as well as to immediately allow him/her to contact one.” CRIMINAL PROCEDURE CODE, Article 97 (2). The same law specifies that the attorney shall have the right to meet the accused party in private. CRIMINAL PROCEDURE CODE, Article 99.(1). Similarly, the Implementation of the Penal Sanctions Act, Promulgated SG No. 30 (Apr. 15, 1969), last amended SG No. 105 (Dec. 29, 2005) [hereinafter “IMPLEMENTATION OF PENAL SANCTIONS ACT”] Article 132b.(1) states that “the accused and the defendants shall have the right to receive a visit from the defense counsel thereof immediately after the apprehension thereof.” IMPLEMENTATION OF PENAL SANCTIONS ACT, Article 132b.(1). Finally, the Law for the Ministry of the Interior (MOI), Promulgated SG No. 17 (Feb. 24, 2006), last amended SG No. 30 (Apr. 11, 2006) [hereinafter “LAW FOR THE MINISTRY OF INTERIOR”] Article 63.(5) provides that “[f]rom the moment of detention the persons shall be entitled to defense by an attorney.” LAW FOR THE MINISTRY OF THE INTERIOR, Article 63.(5).

As reported in the 2004 LPRI for Bulgaria assessment, various administrative regulations and ordinances have served to undermine the attorney’s prompt and private access to clients specified in the law. These include the *Regulation for the Implementation of Penalties Act*, Promulgated SG No. 97 (Dec. 4, 1990), last amended SG No. 108 (Dec. 10, 2004) [hereinafter “MOJ PENALTIES EXECUTION REGULATION”] that requires attorney-client meetings to be conducted “on preliminary determined days . . . in the presence of an employee of the administration”, and a provision of the same regulation that permits detainee telephone calls only to family members, and by implication not to attorneys. MOJ PENALTIES EXECUTION REGULATION, Articles 36.(1) and 37.a(2). This regulation was challenged before the Supreme Administrative Court [hereinafter “SAC”], which upheld the limitation on attorney-inmate meetings to preliminary determined days, as well as the presence of an administration official during such meetings. SAC Decision No. 10070 (Dec. 2, 2004). On the latter point, the court acknowledged that Article 34 of the ATTORNEYS ACT prohibited the interception or recording of attorney-inmate communications, but found that the law did not preclude the “observation” of attorney-inmate meetings. The court also found that the regulation’s limitation on the detainee’s right to make telephone calls did not prejudice the guarantee in Article 34 of the ATTORNEYS ACT, which guarantees the right of private attorney-client communications. Finally, the SAC overturned a provision in the regulation that required attorneys wishing to meet with inmates to provide a letter from the bar association, holding that Article 34.(4) of the ATTORNEYS ACT required only that the attorney present his/her attorney’s card.

Practically speaking, the most frequently voiced issue involves the attorney’s access to the client during the first 24 hours of detention. Under Article 17(2) of the Criminal PROCEDURE CODE, the police may not hold a person in detention for more than 24 hours without obtaining authorization from the court. Respondents stated that it is frequently difficult for an attorney to locate a client, much less pay him a visit, during this initial period of detention. On some occasions the police prolong the statutory period for obtaining court authorization by questioning the person as a “witness,” before formally detaining him/her and initiating the running of the 24-hour period. Reportedly, it is difficult to challenge such potential abuses, since they would not be heard until much later in the proceedings and would not go to the merits of the case. The consensus is that

once the detained person is brought under the supervision of the investigating magistrate access to the client is not a problem.

In addition, respondents indicated that the ability of a detained individual to contact an attorney can differ depending on where the person is detained. In many instances, an individual under detention is allowed a single telephone call to a close family member. It is then incumbent upon the family member to contact an attorney. In Sofia, the reported practice is to allow calls on the police's telephone both to a close family member and to an attorney.

While the primary legislation provides a solid framework for prompt access to an attorney and private attorney-client consultations, conflicting secondary legislation and police actions continue to dilute these protections in practice. Notably, several attorneys interviewed stated that they had no problems obtaining access to clients and in meeting with them in private. This indicates that the situation has been improving in some areas, although the extent of the improvement is difficult to gauge.

Although there has been some improvement in recent years, the facilities for meeting with clients generally remain inadequate. Frequently attorneys must meet with clients in crowded hallways or in the office of the investigating magistrate who has agreed to leave the room. On many occasions security guards are present making the discussion of defense tactics or trial strategy difficult. Courthouses frequently lack rooms for private attorney-client consultations. Ongoing initiatives to improve court buildings and facilities may help to alleviate this latter deficiency. On the other hand, attorneys did not voice any serious complaints about being provided insufficient time to consult with their clients.

#### **Factor 4: Attorney-Client Confidentiality**

***The state recognizes and respects the confidentiality of professional communications and consultations between attorneys and their clients.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
While the principle of attorney-client confidentiality is codified in the law, secondary legislation and authorized prison practices frequently undermine the privacy of communications.		

#### **Analysis/Background:**

The Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"] clearly establishes the confidentiality of attorney-client communications and consultations in criminal matters. For example, Article 30.(5) states that "Everyone shall have the right to meet their defense counsel in private. The confidentiality of such communication shall be inviolable." CONSTITUTION, Article 30.(5).

More broadly, the Attorneys Act, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] provides that the attorney's papers and files, as well as his correspondence and conversations with the client, shall be "inviolable" and not subject to searches and seizures. ATTORNEYS ACT, Article 33.(1-2). As noted in the discussion of Factor 3, the attorney has the right to private meetings with his client, including when the client is under detention. *Id.* at art 34.(1). The conversations at such meetings may not be listened in on or recorded, but the meetings may be observed." *Id.* at art. 34.(3). The ATTORNEYS ACT further provides that the attorney "shall preserve the confidentiality of information related to his/her clients" and specifies that the

obligation of confidentiality is not subject to any time limitations. *Id.* at art.45.(1). The statutory obligations are augmented by Article 5.(1-3) of the Attorneys Ethics Code adopted by the Supreme Bar Council [hereinafter “SBC”] (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”], which declares confidentiality a “primary and fundamental duty of the attorney” and goes on to provide that the attorney “shall require the observance of confidentiality from his staff and anyone he collaborates with in the course of his professional activity.” ATTORNEYS ETHICS CODE, Article 5.(1-3).

The confidentiality of attorney-client consultations are also protected by Article 55 (1) of the Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006)) [hereinafter “CRIMINAL PROCEDURE CODE”], which provides for the right of counsel to meet with the accused in private. “The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence... and have a defence counsel.” CRIMINAL PROCEDURE CODE, Article 55 (1). Similarly, Article 132b of the Penal Sanctions Act, Promulgated SG No. 30 (Apr. 15, 1969), last amended SG No. 105 (Dec. 29, 2005) [hereinafter “IMPLEMENTATION OF PENAL SANCTIONS ACT”] provides for the right to meet with the client, exchange documents, and engage in private conversations that are not overheard or recorded. IMPLEMENTATION OF PENAL SANCTIONS ACT, Article 132b.

However, these statutory assurances are undermined by secondary legislation such as the provision in the *Regulation for the Implementation of Penalties Act*, Promulgated SG No. 97 (Dec. 4, 1990), last amended SG No. 108 (Dec. 10, 2004) [hereinafter “MOJ PENALTIES EXECUTION REGULATION”], which requires that attorney-inmate meetings are to take place in the presence of an administration employee. Practically speaking, many attorneys complain that it is difficult to have private conversations with a detained client because an administration person is always waiting nearby. Other attorneys recount that recently they have not experienced problems consulting with their clients in private, suggesting that the overall situation may be improving. Reportedly, there was one incident of the police seizing an attorney’s files in conjunction with his arrest, but after the local bar council complained the court ultimately required the return of the documents.

The opening of attorney-client correspondence by prison personnel continues to be a problem, although a recent decision by the Constitutional Court should put an end to abusive practices in this area. Article 132.d(3) of the IMPLEMENTATION OF PENAL SANCTIONS ACT provides that “[t]he correspondence of the accused and the defendants shall be subject to examination by the administration.” IMPLEMENTATION OF PENAL SANCTIONS ACT, Article 132.d(3). Prison authorities routinely examined detainee mail pursuant to the statute and a related MOJ ordinance. Then, in 2000 the Supreme Administrative Court (SAC) handed down a decision, which invalidated the relevant section of the MOJ ordinance and allowed for the confidentiality of correspondence between the accused and his/her defense counsel. Despite the court decision, the problem persisted as some prison administrators continued to open attorney-client correspondence asserting that they do not know who all the attorneys are and cannot be certain that correspondence is in fact attorney-client communications. However, in a decision reported after completion of the LPRI interviews, the Constitutional Court ruled that Article 132.d violated the CONSTITUTION and declared it void. Constitutional Court of Bulgaria, Decision No. 4 (Apr. 18, 2006).

Bulgaria’s Anti-Money Laundering Measures Act, Promulgated SG No. 85 (Jul. 24, 1998), last amended SG No. 105 (Dec. 29, 2005) imposes the obligation on attorneys to report money laundering activities of clients in certain circumstances. Although there are a number of exceptions, the law is broad enough to pose a threat to the confidentiality of attorney-client communications. Moreover, the law could put the attorney in an awkward position, since a disclosure under the statute would likely be a violation of the strict confidentiality requirements contained in the previously-cited provisions of the ATTORNEYS ACT and the ATTORNEYS ETHICS

CODE. However, respondents did not report any known incidents of attorneys disclosing client information to the government pursuant to the statute.

## Factor 5: Equality of Arms

***Attorneys have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.***

Conclusion	Correlation: NEUTRAL	Trend: ↔
The law specifies that attorneys shall have full access to information. While access for attorneys for non-parties has improved, practical obstacles and perceived biases persist.		

### Analysis/Background:

Article 31 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] states that "The attorney shall have free access to, and may make references in connection with case files, demand copies of documents and be given advantage in getting information in courts, pre-trial proceedings bodies, other state authorities and bodies, and anywhere as may be necessary, based solely on his/her attorney's capacity that he/she shall certify by presenting his/her attorney's card." ATTORNEYS ACT, Article 31.

In criminal cases, Article 99 (1) of the Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006) [hereinafter "CRIMINAL PROCEDURE CODE"] states that defense counsel have the right to examine the case file and obtain copies of documents that are needed for the defense. CRIMINAL PROCEDURE CODE, Article 99 (1). This includes information obtained by the government using "special intelligence means", (e.g., wiretaps, surveillance, controlled deliveries) which the accused party is authorized to examine. *Id.* at art. 55. Moreover, several other articles mandate disclosure of information or evidence to the accused, including Article 227 (Presentation of the investigation), Article 232 (Accusatory decree), Article 246 (Indictment), and Article 257, which requires the judge to allow the defendant to examine the materials in the case and to make the necessary excerpts.

In civil matters, the Code of Civil Procedure of Bulgaria, Promulgated SG No. 12 (Feb. 8, 1952), last amended SG No. 17 (Feb. 24, 2006) [hereinafter "CIVIL PROCEDURE CODE"] contains several provisions, which obligate the parties (and others) to provide information and documents to each other. These include Article 98, which requires the claimant to set out the circumstances of his/her claim, Article 110, which requires the defendant to produce "all his/her written evidence on the disputable factual circumstances" and permits each party to present new evidence, Article 152, which allows one party to require the other to present documents in his/her possession, and Article 153 which allows parties to obtain documents from persons who are not a party to the proceedings.

The attorney's free and unencumbered access to information envisioned in the ATTORNEYS ACT has been narrowed by the Ministry of Justice's *Regulation for Court Administration in the Regional, District, Military and Appellate Courts*, Promulgated SG No. 95 (Oct. 26, 2004), last amended SG No. 16 (Feb. 21, 2006) [hereinafter "MOJ REGULATION FOR COURT ADMINISTRATION"]. The MOJ REGULATION FOR COURT ADMINISTRATION continues the general practice of requiring an attorney to present a power of attorney executed by the client in order to obtain access to relevant files. While the regulation allows third parties to gain access, they must first file a written request with the court and prove a legitimate interest in the files. Presumably, an attorney who wanted to review the file in order to determine whether to undertake the representation of a client



could gain court-approved access. However, the regulation precludes attorneys for non-parties to gain access to files without specific application to the court.

As a practical matter, obtaining access to court files remains cumbersome and uneven. In criminal cases there is typically a single file which is passed between the judge, prosecutor and attorney for the defendant. Frequently, the file is not available to counsel for the accused a few days before trial because it is with the prosecution office or the court. The common practice is that an attorney must file a request with the court to make copies and it may take a day or two before the judge acts on the request. Additionally, some courts will impose significant fees for the copies. In some instances, attorneys are required to make a request for access to the file, then a separate request to the court to make copies. Respondents expressed fewer difficulties in obtaining access to court files in civil cases. In addition, attorneys do not appear to be experiencing problems obtaining access to classified information under the Law on Protection of Classified Information, Promulgated SG No. 45 (Apr. 30, 2002), last amended SG No. 89 (Oct. 12, 2004), since the enactment of the ATTORNEYS ACT, which put attorneys on par with judges and prosecutors with respect to access to such information under that law. Another positive note is that the Supreme Administrative Court (SAC) and other limited courts give the parties and their attorneys an opportunity to review the basic documents in the file (e.g., the complaint, response, protocols, etc.) through the internet.

Although there has been some improvement, poor courthouse facilities and sometimes uncooperative courthouse personnel continue to impede free and easy access to court documents. While conditions vary around the country, attorneys frequently must review files in small, congested clerks' offices or file rooms that do not have tables or desks available for reviewing large files or records. Copying equipment varies significantly in availability and quality. Sometimes attorneys are required to sign registries or present a copy of a power of attorney before they are allowed to review court records.

There is a sense among many attorneys that the prosecutors have better access to court files than counsel for the accused. As a practical matter, prosecution offices are typically in the same building as the courts and clerks' offices making the files more readily accessible. Additionally, under the Bulgarian legal system prosecutors, like judges, carry the status of magistrates and are not part of the executive branch of government. Many attorneys perceive the courts (and their corresponding clerks' offices) as showing deference to their fellow magistrates and that this bias is reflected in easier access to court files by the prosecution.

## Factor 6: Right of Audience

***Attorneys who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.***

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
Attorneys have the statutory right to appear before courts and administrative bodies on behalf of their clients and do so freely. While some express concern about a lack of complete impartiality when the state is the opposing party, attorneys are treated substantially the same as prosecutors and other attorneys.		

### Analysis/Background:

Attorneys have the statutory right to appear before the judicial authorities and administrative agencies on behalf of their clients. In describing the attorney's practice, Article 24.(1).3 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"]

states that the attorney's activities include "[r]epresenting clients and defending client's rights and legitimate interests before judicial authorities, administrative bodies and authorities, as well as before individuals and legal entities." ATTORNEYS ACT, Article 24.(1).3.

In addition, several other provisions of the ATTORNEYS ACT reflect the right of attorneys to appear before judicial and administrative bodies. For example, Articles 29.(1) states that "the attorney is due the same respect as a judge before the bodies of pre-trial proceedings, the administrative and other authorities of the state, and shall be entitled to rely on the same cooperation as the judge does." ATTORNEYS ACT, Article 29.(1). In addition, as noted in the discussion under Factor 5, Article 31 reinforces the attorney's right to represent clients by granting the attorney free access to files in the courts, pretrial proceeding bodies, and other state authorities and agencies. The only limitations on the right of an attorney to appear on behalf of a client relate to years of experience. An attorney with fewer than two years of experience is registered as a "junior attorney" and may represent a client in the Regional Court. However, a junior attorney may only represent a client before a District Court if he represented the client on the same matter in the lower court. *Id.* at art 20.(6). A junior attorney may represent a client jointly with another attorney on a matter brought before the District Court when it is the court of first instance. *Id.* Along the same line, an attorney who has been admitted to the bar for less than five years cannot appear before the Supreme Court of Cassation (SCC) or the Supreme Administrative Court (SAC). *Id.* at art. 24.(2).

Both the criminal and civil statutes affirm the right of attorneys to participate in proceedings on behalf of their clients. For example, Article 97 of the Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006)) [hereinafter "CRIMINAL PROCEDURE CODE"] states that "defense counsel may join criminal proceeding from the moment an individual is detained or has been constituted in the capacity of accused party." CRIMINAL PROCEDURE CODE, Article 97. The same law specifies that defense counsel may "meet the accused party in private to examine the case file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as file appeals from acts of the court." *Id.* at art. 99. On the civil side, Article 20.(1) of the Code of Civil Procedure of Bulgaria, Promulgated SG No. 12 (Feb. 8, 1952), last amended SG No. 17 (Feb. 24, 2006) [hereinafter "CIVIL PROCEDURE CODE"] specifically lists attorneys as authorized to represent litigants in civil proceedings. CIVIL PROCEDURE CODE, Article 20.(1). As far as administrative proceedings are concerned, Article 56 of the Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"] guarantees every citizen the right to legal counsel when appearing before any institution of the state. In addition, Article 18 of the recently enacted Administrative Procedure Code, Promulgated SG No. 30 (Apr. 11, 2006) [hereinafter "ADMINISTRATIVE PROCEDURE CODE"] incorporates the rules on representation set out in the CIVIL PROCEDURE CODE.

The consensus is that attorneys believe that they have full rights of audience before the courts and administrative bodies and are treated equally in these forums. There is no suggestion that attorneys have been denied access to the courts or administrative bodies on account of their race, religion, ethnicity or gender. However, as noted in the 2004 LPRI for Bulgaria assessment, this does not necessarily mean that attorneys feel that their clients' positions are always evaluated objectively and neutrally, especially when the state is the opposing party. In criminal matters, some attorneys perceive a pro-prosecutor bias on the part of the courts, which they attribute to the country's communist legacy and the fact that both prosecutors and judges have the status of magistrates under the Bulgarian legal system. Reportedly, the national conviction rate for 2004 was 78%, which might lend some credence to this concern. Nevertheless, attorneys clearly have the legal right to appear before judicial and administrative bodies on behalf of their clients. Overall, they believe that they are treated substantially the same as prosecutors and other attorneys.

## II. Education, Training, and Admission to the Profession

### Factor 7: Academic Requirements

*Attorneys have a formal, university-level, legal education from institutions authorized to award degrees in law.*

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
Law schools are formally accredited and prospective attorneys must complete a five-year university law program and pass a state examination in order to receive a Masters in Law degree.		

#### Analysis/Background:

Under Article 4.(1).1 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"], one of the requirements a person must satisfy in order to become an attorney is "to have a university law degree." ATTORNEYS ACT, ARTICLE. 4.(1).1. Under Article 18.1 "Only foreign attorneys who have a university law degree acquired under the legislation of a European Union Member State after having fully completed the required under the law of the respective state period of training and obtained legal capacity to practice law shall be entitled to take the transfer test in Bulgarian law and be to be entered into the Unified Registry of Foreign Attorneys in Bulgaria". ATTORNEYS ACT, Article 18.1 (Effective on the date of Bulgaria's accession to the European Union).

The National Assembly and the Council of Ministers are assigned overall responsibility for the management of higher education in the country. Higher Education Act, Promulgated SG No. 112 (Dec. 17, 1995), last amended SG No. 103 (Dec. 23, 2005) [hereinafter "HIGHER EDUCATION ACT"] Article 9.(1). The Council of Ministers is responsible for setting the state requirements for earning university degrees in the specialties of the regulated professions, including law. *Id.* at art. 9.(3).5. The National Agency for Assessment and Accreditation [hereinafter "NAAA"] serves as the specialized state authority vested with "assessment, accreditation and quality control" responsibilities. HIGHER EDUCATION ACT, Article 11.(1). The NAAA is directed by an 11-member Accreditation Board appointed by the Prime Minister. NAAA members are drawn from persons having academic rank in the spheres of higher education. *Id.* at arts. 86.(1) and (5). The NAAA and the Accreditation Board are both authorized to develop criteria and procedures for the assessment and accreditation of institutions of higher education. *Id.* at arts. 85, 88. Operationally, the NAAA conducts two types of accreditations, one for the university and one for its programs. *Id.* at art. 76. It also has monitoring responsibilities. *Id.* at art. 11.(4).

The basic standards that a law school must meet in order to confer degrees in law are set out in an ordinance adopted by the Council of Ministers. Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification "Lawyer," Adopted SG No. 75 (Apr. 5, 1996), last amended SG No. 69 (Aug. 23, 2005) [hereinafter "LEGAL EDUCATION ORDINANCE"]. Law Students are admitted on the basis of a written examination which tests the prospective student's aptitude in the Bulgarian language and Bulgarian history. *Id.* at art. 4.(1). Individual universities have the discretion to set their own admission standards. *Id.* at art 4.(4). In order to earn a degree, the student must complete at least 10 semesters and a minimum of 3,500 hours of study. *Id.* at art. 6. The curriculum includes obligatory courses, as well as elective and optional disciplines. The obligatory courses set out in the LEGAL EDUCATION ORDINANCE include courses in constitutional law, property law, criminal law and procedure, civil law and procedure, tax law, and European Union law.

The university may require additional obligatory courses and must include as part of its elective portfolio courses in Roman private law, intellectual property law, criminology, bank law, criminal execution law and a course on the legal framework of civil services. *Id.* arts. 7.(4) and 9.(1).

After their second year of study, students are required to participate in an internship program in the judicial and executive branches. *Id.* at art. 10(1). This practical training program is developed and organized in cooperation with the Ministry of Justice (hereinafter “MOJ”) and must be at least 14 days in duration. *Id.* at art. 10.(1-3).

One promising development is that recent amendments to the LEGAL EDUCATION ORDINANCE specifically allow for the establishment of legal clinics and recognize their role in providing practical education to law students. *Id.* at art. 10a.(1-2). The ordinance specifies that clinical work with real clients is to be carried out only after relevant theoretical preparation and under the supervision of practicing attorneys. *Id.* at art. 10a.(3). Students who participate in the legal clinics upon passing an examination may opt out of the internship program mentioned above. *Id.* at art. 10a.(4). Participation in the clinics is elective. The role of legal clinics is addressed further in the discussions of Factors 8 and 19.

Once the university course work is completed, the student must sit for a state examination. The examination consists of written and oral segments and covers public law, civil law, and penal law. *Id.* at art. 11.(1-2). Once the state examination is passed, the student receives a Master of Laws (LL.M) degree with the professional qualification “lawyer”. After receiving his/her diploma, the graduate is required to serve a three-month practical internship program as a “trainee-lawyer” in the judiciary and must pass another oral examination administered by the MOJ. Judicial Systems Act, Promulgated SG No. 59 (July 22, 1994), last amended SG No. 86 (Oct. 28, 2005), Article 163. In order to practice as an attorney, graduates must then pass the bar examination (See Factor 9).

There are currently ten law schools operating in the country, although one has not renewed its accreditation and is expected to close its doors sometime in 2007. Of the remaining nine, three are private and six are state-supported. While Bulgaria’s legal education system meets the technical criteria of this standard, as discussed under Factor 8, its effectiveness in preparing students for the actual practice of law remains problematic.

## Factor 8: Preparation to Practice Law

***Attorneys possess adequate knowledge, skills, and training to practice law upon completion of legal education.***

<b>Conclusion</b>	<b>Correlation: NEGATIVE</b>	<b>Trend: ↔</b>
Although there has been some improvement in the educational system, recent law graduates generally lack the knowledge, skills and training to practice law effectively upon completion of their legal education.		

### Analysis/Background:

In the past 17 years, the number of law schools in Bulgaria has grown from a single school to the ten university programs that are currently in operation. As discussed in the 2004 LPRI for Bulgaria assessment, this increase has had a number of undesirable effects, including a dilution of the overall quality of students entering the law schools and the phenomenon of underpaid, itinerate law professors who travel around the country to lecture at as many as five different law

schools in order to earn an acceptable income. Although some law professors teach only specialized classes and, therefore, teach at several universities because no university has a need to have them teach a full load, faculty members who teach full-time should receive adequate pay to enable them to devote their time to teaching. The common perception is that the quality of legal education in Bulgaria is uneven and generally inadequate.

The main critics of the Bulgarian legal education system, which include many in academia, point to the fact that the teaching is predominately theoretical in nature and too reliant on the lecture as the method of instruction. Conversely, the teaching of practical skills, such as legal writing, negotiation, confronting ethical issues, and trial advocacy, are not included in the required areas of study, which are substantive in nature. Notably, moot court participation and work in legal clinics are considered extra-curricular activities. The law schools have seminars that sometimes, based on the initiative of the professor, include legal research and writing assignments. However, they are frequently crowded with as many as twenty-five students and it is reportedly difficult to get individual attention even from the professor's assistants. More generally, respondents reported that law school education places too much emphasis on memorization and not enough on critical thinking. Many students seek part-time work with a law firm or another legal office in order to round out their law school education with some practical experience.

There are reportedly eight legal clinics operating in the law schools around the country. Most of them are in the process of overcoming resistance from local bar councils (who initially see them as possible competitors) and university administrators. The legal clinics have been successful at exposing a small number of students to real life legal problems and courtroom practices on behalf of disadvantaged clients. However, most of the legal clinics are financially supported by donors, including ABA/CEELI, which will be concluding formal operations in the country in September 2006, but continuing to support local efforts through indigenous actors and cooperative measures. Thus, the continued viability of many of the clinics is in question if the universities and the legal community do not take a more active role in supporting them.

The two internship programs mentioned in the discussion of Factor 7 are of limited usefulness. The student internship program is not particularly well-regarded and frequently involves little more than looking in on an ongoing trial after a preliminary orientation. As for the three-month judicial internship, the predominant view is that it is not well-organized or long enough in duration (until a few years ago it was a year-long program). In addition, judges and prosecutors with heavy caseloads frequently do not have much time to spend tutoring young interns, although the experience can vary depending upon the judge or prosecutor to whom the intern is assigned. The examination at the conclusion of the internship program is not regarded as a meaningful test of the intern's legal training. As a result, young law graduates in most cases lack the practical legal skills necessary for the practice of law. This is mitigated to some degree by the practice of many of the larger law firms that invest significant time training new attorneys to raise their skills to an acceptable level.

One recent development holds some promise to improve the situation. As noted in the Summary Findings section of this Index, the Supreme Bar Council (SBC) recently enacted an ordinance establishing an Attorneys' Training Center in accordance with Article 28.(1) of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"]. (See discussion under Factor 14.) One of the planned training courses is a basic instruction module for attorneys who have been recently admitted to the bar. The course would be obligatory and would cover practical skills and considerations not covered in the law school curriculum or the internship programs. To a much lesser degree, this program would parallel a mandatory six-month training program for new judges and prosecutors conducted at the National Institute of Justice [hereinafter "NIJ"], which is mandated by the Judicial Systems Act, Promulgated SG No. 59 (July 22, 1994), last amended SG No. 86 (Oct. 28, 2005) [hereinafter "JUDICIAL SYSTEMS ACT"]. For example, under Article 35g(1-2) "(1) Once they have taken up their position, junior judges, junior prosecutors and junior investigators shall undergo a mandatory training course at the National Institute of Justice. (2) The training curriculum at the National Institute of Justice shall be

of six months. Within the period trainees shall be entitled to receive the remuneration for the relevant position they occupy.” JUDICIAL SYSTEMS ACT Article 35g(1-2). Although implemented in 2004, the NIJ’s mandatory training program is generally regarded as having greatly improved the quality of new judges and prosecutors entering those professions.

## Factor 9: Qualification Process

***Admission to the profession of attorney is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↑</b>
Prospective attorneys must pass a comprehensive, rigorous bar examination for entry into the profession. While new attorneys may work jointly with more senior attorneys in certain cases, there is no supervised apprenticeship program.		

### Analysis/Background:

Article 4.(1).4 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”] provides that one of the requirements for becoming an attorney is “to have passed the exam provided [for] under this Act.” Article 8.(1-3) of the ATTORNEYS ACT goes on to provide that:

- (1) The exam shall be held in two sessions each year before a Commission appointed with a Ordinance [decision] of the Supreme Bar Council Chairperson and consisting of: five (5) attorneys, at least two of them being certified teachers of legal sciences or legal scholars. The Chair of the Commission shall be a representative of the Supreme Bar Council.
- (2) The procedure for holding the exam shall be determined by a Regulation of the Supreme Bar Council.
- (3) The Exam shall be written and oral and the result shall be either passed or failed. ATTORNEYS ACT, Article 8.(1-3).

In accordance with the statute, the Supreme Bar Council [hereinafter “SBC”] issued “Supreme Bar Council’s Ordinance #2/29.10.2004 on the Conditions and Procedure for carrying out the Bar Exam for Attorneys and Junior Attorneys”, Promulgated SG No. 99 (Nov. 29, 2004), last amended SG No. 39 (May 10, 2005), [hereinafter “BAR EXAMINATION ORDINANCE”]. Article 3 of the BAR EXAMINATION ORDINANCE provides that the entry examination shall be given twice a year, in June and November. *Id.* at art. 3. The announced dates of the examination are published in advance in at least two national daily newspapers, as well as on the SBC’s webpage. *Id.* The exam consists of a written part and an oral part. *Id.* at art. 7.(1). The written part has two components, a multiple choice component and an essay (or mock case) component. The multiple choice component has between 70 and 100 questions, which test the candidate’s knowledge in all areas of the law. *Id.* at art. 12.(1-2). The multiple choice component lasts three hours and the candidate must answer at least 70% of the questions correctly in order to receive a passing grade. *Id.* at arts. 12.(5) and 12.(7). The essay component tests the candidate’s ability to apply theoretical knowledge in practice by writing a position on mock cases. *Id.* at art. 13.(1). The candidate is required to write a position on two hypothetical cases, one in the area of substantive and procedural civil law and one in the area of substantive and procedural criminal law. *Id.* at art. 13.(2). The essay component also lasts three hours. *Id.* at art. 13.(5). The examination committee reads and grades only the essays of the candidates who passed the multiple choice

component and assigns a “passed” or “not passed” grade to the essay. *Id.* at art. 13.(7). Only candidates who pass both components of the written examination are admitted to the oral exam. *Id.* at art. 7.(3). The oral examination evaluates the candidate’s general legal knowledge, as well as the legal framework governing the legal profession and the ethical rules governing an attorney’s conduct. *Id.* at art. 15.(1). The candidate is told whether or not he/she received a passing grade at the conclusion of the oral examination. *Id.* at art. 15.(4).

The bar examination is open to all prospective attorneys and junior attorneys who have met the educational and other requirements for admission to the bar. The candidate registers for the examination by filing a written application with the Bar Council of the college where he/she wishes to be registered. BAR EXAMINATION ORDINANCE Article 9.(1). The Bar Councils forward a list of candidates from their Attorneys’ College, together with the corresponding applications, to the SBC in Sofia. *Id.* at art. 11.(1). The bar examination is conducted only in Sofia, a practice which allows the SBC to maintain tight control over the examination. While this presents some inconvenience to candidates in remote areas, Bulgaria is a small country and it does not raise an issue as to equality of access to the examination.

In November 2005, the SBC conducted the third bar examination held since the institution of the requirement in 2004. A total of 324 applicants sat for the examination. Out of that number, 173 candidates, or about 53%, passed. The pass rate for the written portion of the exam was about 55%, while nearly all candidates who took the oral exam (97.64%) passed. The results suggest a more rigorous test than the June 2005 exam, in which 75% of the candidates who took the exam passed. The SBC also compiled statistics on the number of candidates and the pass rates from each law school.

By nearly all accounts, the bar examination is regarded as both fair and comprehensive. The BAR EXAMINATION ORDINANCE provides for a procedure, whereby each candidate receives an identification number and the identity of the candidate is not known until after the written portion of the examination is concluded and the grade assigned. *Id.* at arts. 6.(1), 12.(6), 13.(6), and 13.(8). Substantively, the examination encompasses all areas of criminal, civil, administrative and procedural law and, therefore, ensures that new members of the profession meet a minimum level of competency in the law. A few respondents have questioned both the comprehensiveness and utility of the oral examination, noting the high passage rate for that portion of the test. To date, the examination has been updated regularly.

Bulgaria does not have a supervised apprenticeship program for new attorneys. While most prospective attorneys must serve for two years as a “junior attorney”, they still enjoy most of the rights and obligations of regular attorneys. ATTORNEYS ACT, Article 20. The principal restrictions on junior attorneys relate to their ability to represent clients in the District Court. *Id.* at art. 20.(6). For example, a junior attorney must jointly represent a client with another attorney if he/she wishes to appear in a dispute brought before the District Court as the court of first instance. *Id.* However, there is no procedure for the evaluation or supervision of junior attorneys and they automatically achieve full attorney status after two years.

## Factor 10: Licensing Body

***Admission to the profession of attorney is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.***

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
The Bar Councils of the Attorneys’ Colleges impartially administer admission into the profession and their decisions are subject to administrative and judicial review.		

### Analysis/Background:

Admission to the legal profession is administered by the Bar Councils of the 27 Attorneys' Colleges, bodies that are self-governing and independent of the executive branch. Under Article 4.(1) of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"], "[a]ll Bulgarian citizens of legal capacity are eligible to become attorneys if they meet the following requirements:

1. to have a university degree in law;
2. to have acquired the right to practice law;
3. to have at least two years of professional legal experience;
4. to have passed the exam provided under this Act, without prejudice to article 6, paragraph 3 [that is, candidates with a Ph.D. degree in legal sciences or 5 years of legal experience]; and
5. to have the moral and professional qualities necessary for practicing the attorney's profession." ATTORNEYS ACT, Article 4.(1)1-5.

There are separate provisions pertaining to the requirements for foreign attorneys to be admitted to an Attorneys' College that will become effective upon Bulgaria's entry into the EU. *Id.* at arts. 15-18.

In order to apply for admission, Bulgarian citizens are required to submit an application along with supporting documents to the relevant Bar Council. ATTORNEYS ACT, Article 6.(1). The Bar Council has one month to review the application and issue a written decision on whether the applicant meets the qualifications for entry into the profession. *Id.* at art. 6.(2). Failure to issue a decision within that period is considered a tacit refusal. *Id.* The Bar Council is required to notify both the candidate and the Supervisory Council of the Attorneys' College of its decision and either can appeal the decision or a tacit refusal to the Supreme Bar Council [hereinafter "SBC"]. *Id.* at art. 7.(1-2). The SBC reviews the merits of the appeal and is required to issue a decision within a month with failure to issue a decision in the time period constituting a tacit refusal. *Id.* at art. 7.(4). A decision or tacit refusal of the SBC can be appealed by either the candidate or Supervisory Council to the Supreme Court of Cassation (SCC). *Id.* at art. 7.(5).

The consensus is that the Bar Councils and the SBC administer the admission process in a fair and impartial manner. The admission criteria are clearly spelled out in the statute, although the requirement that a person have the "moral and professional qualities necessary" to practice law could conceivably be used as a pretext for unjustifiably denying admission to an otherwise acceptable applicant. However, respondents did not cite any incidents of the alleged improper use of this criterion by Bar Councils. Moreover, as previously described, an alleged improper denial of admission could be appealed first to the SBC and then to the judiciary. There were no reported incidents of corruption in the admission process.



## Factor 11: Non-discriminatory Admission

***Admission to the profession of attorney is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.***

Conclusion	Correlation: POSITIVE	Trend: ↑
Admission to the bar is non-discriminatory, although there remains concern that high admission fees in some Attorneys' Colleges could deter less affluent applicants.		

### Analysis/Background:

Article 4.(1) of the Protection against Discrimination Act, Promulgated State Gazette No. 86 (Sept. 30, 2003), last amended SG No. 30 (Apr. 11, 2006) [hereinafter "ANTI-DISCRIMINATION ACT"] states that "Any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned." ANTI-DISCRIMINATION ACT, Article 4.(1).

The law goes on to specify various circumstances where it is not discrimination to treat a person differently on the basis of one of the above-cited grounds. *Id.* at art. 7.(1). One of the exceptions provides that it is not discrimination to treat persons differently on the basis of their citizenship in cases where such treatment is provided for by law or treaty. *Id.* at art. 7.(1)1.

The Attorneys Act, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] does not contain a specific anti-discrimination clause with respect to admission and allows the exclusion of certain persons on various permissible grounds. For example, Article 4.(1) places a citizenship requirement stating that "Any Bulgarian citizen of legal capacity may become an attorney" if they meet certain conditions, such as having a law degree, having at least two years professional experience and have passed the bar exam. *Id.* at art 4.(1). In addition, under Article 4.(1).5, one must "have the necessary moral and professional qualities for practicing the attorneys profession". *Id.* at art 4.(1).5. Furthermore, under Article 5.(1).1, one may be denied access to the profession if they have "a criminal record for an intentional crime of a general nature". *Id.* at art 5.(1).1. Under Article 5.(1).2, access can be denied to "persons placed under civil disability by court or persons suffering from a mental disease, which is a continuing obstacle to the practicing of the attorney's profession". *Id.* at art. 5.(1).2. Finally, certain employment positions, such as merchant and civil servant positions may be cause to deny admission. For example, under Article 5.(2). (1-5) the following persons may not be registered as attorneys:

1. merchants, managers in commercial partnerships or executive directors of joint-stock companies;
2. civil servants;
3. persons employed under an employment contract unless the contract is for teaching in higher educational institutions or are legal scholars in a science institution;
4. persons who have been released from the position of a judge, prosecutor, investigator under Article 129 (3) p.5 of the Constitution, or persons who have been dismissed pursuant to a disciplinary action from the positions of recordation judge, bailiff, company lawyer or police investigator for a two-year period of time after the dismissal.
5. Persons who have been deprived of their right to practice as notary publics – for the period of deprivation. ATTORNEYS ACT, Article 5.(2).(1-5).

These distinctions are not among the discriminatory grounds cited for this Factor.

Article 10 of the Attorneys Ethics Code adopted by the Supreme Bar Council [hereinafter “SBC”] (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”] states that “In all of his/her activities the attorney shall not discriminate on any ground including sex, race, nationality, ethnic origin, citizenship, religion, education, convictions, political affiliation, personal or public status, handicap, age sexual orientation, family status, property status or any other characteristics established by law or by an international treaty binding the Republic of Bulgaria.” ATTORNEYS ETHICS CODE, Article 10. Since service on a Bar Council is part of the attorney’s activities, this provision would prohibit discrimination in the admission process on the basis of impermissible factors, such as race or sexual orientation.

There is no evidence to suggest that minority groups, including the Roma population, are discriminated against in the admission process. The representation of these groups in the legal profession is discussed further in Factor 15.

In the 2004 LPRI for Bulgaria assessment, it was observed that many local Bar Councils charge significant one-time admission fees to be paid in a lump sum by applicants to the bar. The concern expressed was that the practice could have the effect, if not the purpose, of discriminating against a substantial number of applicants based on their financial resources. During the present LPRI assessment visit, the survey of several Bar Councils found local entrance fees, in U.S. dollar equivalents, ranging from US \$310 to US \$1,863 [The exchange rate used was 1.61 leva to one U.S. dollar, the prevailing rate during the LPRI interviews]. These fees also include a one-time admission fee to the Supreme Bar Council (SBC). The setting of entrance fees falls within the discretion of the local Bar Councils, without any centralized control, guidelines or standards. Many respondents interviewed believed that the entrance fees were high and not reasonably connected to the costs of the admission process. Other attorneys expressed the view that the fees were not a barrier to admission and noted that most fee structures varied according to the applicant’s years of experience, with the lowest entry fees applied to new attorneys who were in the least favorable position to pay. It was also pointed out that a few of the Attorneys’ Colleges have relatively low fees and there is nothing to prevent attorneys from registering in these low-cost districts. While the high entry fees remain a concern, the absence of any other discriminatory practice in the admissions process and the fact that fee structures are not a described basis for discrimination call for an upgrade under this Factor compared to the 2004 LPRI for Bulgaria assessment.

### III. Conditions and Standards of Practice

#### Factor 12: Formation of Independent Law Practice

*Attorneys are able to practice law independently or in association with other attorneys.*

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
The law allows attorneys to practice independently in a variety of professional arrangements, including as sole practitioners, in attorney partnerships, and in other joint undertakings.		

#### Analysis/Background:

Article 3.(1) of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”] specifies that the attorneys’ profession “may be practiced only by an attorney

practicing independently or in a partnership, as stipulated for under this Act.” ATTORNEYS ACT, Article 3.(1). The law expressly excludes “merchants, managers in commercial partnerships or executive directors of joint-stock companies”, civil servants, or persons employed under an employment contract (unless they are lecturers in legal science or legal scholars) from being registered as attorneys. In practice, Bulgarian attorneys practice under a variety of business arrangements, including traditional civil law associations and office sharing agreements. While the nature and structure of law practices have been evolving, the predominant method of practice remains the solo practitioner. This is especially true in the smaller cities and in the countryside.

Chapter X of the ATTORNEYS ACT, pertaining to the joint practice of the attorney’s profession, provides for two types of associations under which attorneys can jointly practice law. The most common grouping is an “attorneys’ association” (referred to here as a “civil law partnership”) provided for in Articles 52-56. These associations of attorneys are established and regulated under the Law of Obligations and Contracts, Promulgated SG No. 275 (Nov. 22, 1950), last amended SG No. 43 (May 20, 2005). They are not legal entities and more closely resemble joint venture arrangements. Both attorneys and attorney partnerships (described later) may combine into civil law partnerships. ATTORNEYS ACT, Article 52.(1). In addition, attorneys and attorney partnerships in different Attorneys’ Colleges may combine their practices in such arrangements. *Id.* at art. 52.(2). In each case, the agreement must be in writing and registered with the appropriate Bar Council. *Id.* at art. 52.(3). Attorneys practicing in civil law partnerships may not represent clients with conflicting interests, *Id.* at art. 55. The conflict of one attorney would be imputed to the other partners in the civil law partnership under the conflict of interest rules specified in Article 13.(1-6) of the Attorneys Ethics Code adopted by the Supreme Bar Council [hereinafter “SBC”] (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”], which states:

- (1) An attorney shall not advise, represent or act on behalf of two or more clients in the same matter if the attorney is aware of a conflict between the interests of those clients.
- (2) An attorney shall inform and receive the prior consent of all interested parties before assuming the representation of one or more of the parties in a case in which there is a risk of conflict of interests.
- (3) Where a conflict of interests arises between clients of the attorney, the attorney should try to reconcile the conflicting interests and, if unsuccessful, the attorney shall stop providing advice, defense and procedural representation to the parties in that particular case.
- (4) An attorney shall refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the attorney by a former client or if the knowledge which the attorney possesses of the affairs of the former client would give an unreasonable advantage to the new client. This is applicable also to cases in which information has been obtained as a consequence of previous employment as civil servant, judge, prosecutor, investigator, police investigator, notary or Jurist consult.
- (5) An attorney shall refrain from providing consultation, assistance, defense or procedural representation of any client in cases in which there is a risk of conflict with the attorney’s personal interests or interests of anyone closely related to the attorney, or when a conflict arises after the undertaking of such representation.
- (6) When attorneys are practicing in association pursuant to the Attorneys Act, Art 13 paragraphs 1-5 shall apply to each of the association’s members. ATTORNEYS ETHICS CODE, Article 13. (1-6).

The second type of association of attorneys is the “attorney partnership”, a legal entity described in Article 57 of the ATTORNEYS ACT. The law provides a comprehensive set of requirements and procedures for the establishment, operation, governance and termination of such partnerships. ATTORNEYS ACT Articles 57-75. For example, only attorneys may be partners in an attorney partnership and an attorney may be a participant in only one such partnership. ATTORNEYS ACT,

Articles 57.(1) and 57.(2). The partnership must be established by a written contract and it must be registered with the appropriate Bar Council. *Id.* at arts. 58 and 61.(1). Attorney partnerships may establish offices in different districts where they must be entered into the Bar Council registers. *Id.* at art. 60.(4). There are rules concerning the rights of the partners, capital contributions, and management of the attorney partnership. *Id.* at arts. 65-70. The partnership is required to obtain liability insurance for its members. *Id.* at art 72.(2). The attorney who worked on a matter is personally liable for damages incurred by a client as a result of negligence, and each partner is liable up to the amount of his capital contribution to the partnership. *Id.* at art 72.(1). The procedures for termination and liquidation of an attorney partnership are specified in Articles 73-75. Like attorneys practicing in civil law partnerships, the conflict of one attorney in an attorney partnership would be imputed to the other members under the conflict of interest rules set out in Article 13. (1-6) of the ATTORNEYS ETHICS CODE.

In addition to associations of attorneys, the ATTORNEYS ACT provides for certain contractual arrangements between attorneys and attorney partnerships. *Id.* at arts. 76-77. An attorney, or an attorney partnership, may enter into a cooperation agreement with another attorney or attorney partnership for the performance of a particular legal service or work on certain cases. *Id.* at art. 76. In addition, an attorney or an attorney partnership may enter into a written contract "of a definite or an indefinite duration with another attorney for permanent work for a certain remuneration." *Id.* at art. 77. Under Article 77.(3), the latter arrangements are regarded as service contracts. *Id.* at art. 77.(3).

A provision of the ATTORNEYS ACT allows a foreign attorney to represent a national of his/her country before a Bulgarian court, if accompanied by a Bulgarian attorney and if certain conditions are met. ATTORNEYS ACT, Article 10. Broader rules under which attorneys from European Union (EU) member states may practice in Bulgaria will go into effect on the date of Bulgaria's accession to the EU. *Id.* at arts. 11-19a.

The legislation governing the legal profession authorizes several mechanisms and structures under which attorneys may practice independently or jointly in order to deliver legal services to their clients. The most recent form of practice, the attorney partnership, is still in the process of being accepted and only a few of them have been registered with the Bar Councils. One obstacle to wider acceptance has been the lack of any tax advantage for practicing in such partnerships. Attorneys, whether or not they practice in an attorney partnership, are currently subject to a flat 35% deduction for expenses and no allowance is provided for depreciation of assets used in connection with the practice. Law for the Taxation of the Income of Physical Persons, Promulgated SG No. 118 (Dec. 10, 2004), last amended SG No. 17 (Feb. 24, 2006) [hereinafter "LAW ON PHYSICAL PERSON INCOME TAX"], Article 22.(1).1. A promising development is that the SBC has indicated that it favors future legislation, which would provide tax preferences to attorney partnerships. Some observers have noted that many attorneys recognize the need to adapt and have recently joined forces to provide more specialized legal services either on an *ad hoc* basis, through office sharing arrangements, or through cooperative agreements provided for under the ATTORNEYS ACT. It is generally acknowledged that EU membership, and with it an increase in transnational commerce and legal complexity, will likely engender an increased demand for specialization and expertise on the part of the attorney profession.

## Factor 13: Resources and Remuneration

***Attorneys have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↑</b>
Attorneys generally have access to information and other resources needed to practice law effectively, however, overall attorney compensation remains low.		

### Analysis/Background:

For the most part, attorneys have broad access to legal resources, such as court cases and legal databases through the use of computers. Online resources that attorneys regularly consult include texts of current laws and treaties, bills pending in the National Assembly, significant decisions of the Constitutional Court, Supreme Court of Cassation [hereinafter “SCC”] and Supreme Administrative Court [hereinafter “SAC”], and some Court of Appeals and District Court decisions. Most of the legal databases are accessible through software installed on the computer, while a few others are web-based. Some of the web-based sites require subscriptions, which are affordable. In many districts, the local Bar Council maintains an office which includes a computer from which members of the Attorneys’ College can access legal databases and other materials on the internet. In addition, the Supreme Bar Council [hereinafter “SBC”] maintains a highly-regarded, although under-publicized library and some of the local Bar Councils have libraries, as well. The SBC also publishes a periodic magazine, which contains recent legislation and important court decisions.

In terms of remuneration, the consensus is that attorneys around the country continue to be poorly compensated. This is particularly true in smaller cities and economically distressed areas where clients frequently do not earn enough money to afford even the minimum attorneys’ fees established by the profession. The proliferation of attorneys over the past 15 years and weak economic conditions remain the most significant factors in substandard attorney compensation. There are, of course, a few attorneys and firms who represent large corporate or foreign clients and, therefore, are doing quite well. In addition, some respondents felt that although attorney compensation was not high, it compared favorably to other professions. Some observers are hopeful that a stabilization of the number of new attorneys entering the profession and future entry into the European Union (EU) will have a favorable impact on attorneys’ remuneration.

Statutorily, the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”] specifies that the attorney’s remuneration rate shall be established in an agreement between the attorney and the client. ATTORNEYS ACT, Article 36.(2). The attorney’s remuneration rate “shall be fair and justified” and not less than the minimum compensation specified in the SBC’s Regulation No. 1 of 9 July 2004 related to the Minimum Rate of Attorneys’ Remuneration”, Promulgated SG No. 64 (July 23, 2004) [hereinafter “MINIMUM FEE TARIFF”] for the type of service provided. ATTORNEYS ACT Article 36.(2). The Attorneys Ethics Code adopted by the Supreme Bar Council (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”] reiterates these requirements and provides that the attorney is to inform the client in advance of the full amount of his/her fees. ATTORNEYS ETHICS CODE, Article 14. The minimum fees specified in the MINIMUM FEE TARIFF are low by international or EU standards. A few examples, using U.S. dollar equivalents, are as follows: drafting a will, US \$31; preparing and registering a limited partnership, US \$51; handling a divorce, US \$62. MINIMUM FEE TARIFF at arts. 6.7, 6.9(C), and 7.(1)2. In criminal cases, the minimum fee is frequently based on the severity of the punishment. For example, the minimum fee for representing a defendant before the court in cases where the crime is punishable by up to 10 years’ imprisonment is US \$186. *Id.* at art. 13.(1). A separate fee structure applies to pre-trial proceedings in criminal cases. *Id.* at art. 12. Of course, attorneys

are free to negotiate higher fees than those set out in the MINIMUM FEE TARIFF. However, many clients regard the published minimum fee to be the “fair and justified” charge for the legal service they are seeking.

The MINIMUM FEE TARIFF also determines, or affects, attorney fees in other ways, including situations in which the losing party in legal and administrative disputes is required to pay attorney fees in an amount determined by the court or administrative agency. See, e.g., Code of Civil Procedure of Bulgaria, Promulgated SG No. 12 (Feb. 8, 1952), last amended SG No. 17 (Feb. 24, 2006) [hereinafter “CIVIL PROCEDURE CODE”] Article 64; Personal Income Tax Act, Promulgated, SG No. 118 (Dec. 11, 1997), effective (Jan. 1, 1998), replaced by Tax and Social Security Procedure Code, SG No. 105 (Dec. 29, 2005), last amended SG No. 30 (Apr. 11, 2006) art. 130.(4). In such cases, the court or agency often applies the MINIMUM FEE TARIFF in assessing attorney fees. In addition, Article 36.(4) of the ATTORNEYS ACT authorizes attorney fees based on “a percentage of a certain interest in connection to the outcome of the case”, except in criminal cases and civil cases involving non-pecuniary interests. ATTORNEYS ACT Article 36.(4). While such contingency fee arrangements are not presently used in practice, the overriding requirement that fees meet the rates set forth in the MINIMUM FEE TARIFF would limit the usefulness of such fee structures.

A significant development for attorneys’ remuneration was the recent enactment of the Legal Aid Act, Promulgated SG No. 79 (Oct. 4, 2005), effective (Jan. 1, 2006) [hereinafter “LEGAL AID ACT”]. (The new legal aid system is described in more detail in the discussion of Factor 19.) The law provides for a broad system of legal support for disadvantaged clients and specifies that payment for the amount of work performed by participating attorneys is to be determined by an ordinance of the Council of Ministers. LEGAL AID ACT Article 37.(1). The implementing directive, the Ordinance for the Payment of Legal Support, Adopted SG No. 5 (JAN. 17, 2006) [hereinafter “PAYMENT OF LEGAL SUPPORT ORDINANCE”], specifies that payment for specific legal services is to fall within a range of minimum and maximum amounts. PAYMENT OF LEGAL SUPPORT ORDINANCE Article 8. For example, in a criminal matter such as that previously described, where the penalty is up to 10 years of imprisonment, the fee for each trial level is between US \$141 and US \$186. *Id.* at art. 17.2. The attorney’s remuneration for handling a divorce ranges from US \$50 to about US \$75. *Id.* at art. 23.2. While the level of compensation provided for in the PAYMENT OF LEGAL SUPPORT ORDINANCE is not high, in most cases the maximum amount of the range is comparable to the fees specified in the SBC’s MINIMUM FEE TARIFF. More importantly, the LEGAL AID ACT establishes a National Legal Aid Bureau financed by the state to administer the legal aid system. LEGAL AID ACT, Articles 2, 6. Under the previous system, in certain criminal cases court-appointed public defenders were paid out of the court budgets and payment was reportedly erratic, untimely, and frequently below the required minimum amounts specified in the SBC’s MINIMUM FEE TARIFF. Although it is too early to reach any conclusions, the new law holds the promise of a more fair, efficient, and adequately-funded system in which attorneys are more fairly and predictably compensated for the legal aid services they provide.

## Factor 14: Continuing Legal Education

***Attorneys have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of attorney.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
The leadership of the organized bar has established an Attorneys’ Training Center, which has initiated an ambitious continuing legal education [hereinafter “CLE”] program to develop and improve the skills of attorneys, although the impact of this initiative has not yet been realized. Local training continues to take place on a non-systematic basis.		

## Analysis/Background:

One of the significant developments since publication of the 2004 LPRI for Bulgaria assessment was the Supreme Bar Council's (hereinafter "SBC") establishment of an Attorneys' Training Center for the purpose of training and maintaining attorney qualifications and standards. Article 27 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"] provides that attorneys have the obligation to "maintain and improve their qualifications." ATTORNEYS ACT, Article 27. In furtherance of this requirement, the SBC was required to establish a training center and "determine the center's structure, organization, admission requirements, training programs and funding by means of a regulation thereof." ATTORNEYS ACT Article 28.(1) and (2). See also *Id.* at art. 122.9, relating to the duties of the SBC.

In December 2005, the SBC adopted an ordinance to govern the structure, organization, funding and curricula of the Attorneys' Training Center. Ordinance No. 4 Attorneys' Training and Qualification (Dec. 20, 2005) [hereinafter "ATTORNEY TRAINING ORDINANCE"]. Under the ordinance, the Attorneys' Training Center is established and registered with the court as a non-profit legal entity. ATTORNEY TRAINING ORDINANCE, Article 3.(1). The activities of the Attorneys' Training Center are to be organized and managed by a managing board and "shall be conducted by specifically created units and by employees of the center under employment or civil contracts." *Id.* at art. 9.(1). Under the latter authority, in March 2006 a well-regarded Director was employed to manage and direct the center. The managing board is also required to draft the curricula for training programs and plan the Attorneys' Training Center's operations, subject to the approval of the SBC. *Id.* at art. 9.(3). Furthermore, the managing board is responsible for submitting an annual activities report, financial and accounting reports, and a budget for the upcoming year. *Id.* at art. 9.(4).

Under the ordinance, initial funding for the Attorneys' Training Center was the obligation of the SBC. ATTORNEY TRAINING ORDINANCE, Article 10.(1)1. Subsequent funding installments will come annually from the SBC and the local Bar Councils, although local bar contributions are done on a voluntarily basis. *Id.* at art. 10.(1).2. The ordinance further provides for funding through grants and inheritances, permitted subsidies, financial assistance, sponsorships, income from allowable economic activities, and tuition fees for training programs. *Id.* at arts. 10.(1) 3-5.

The establishment of the Attorneys' Training Center and the hiring of its Director are significant steps in improving CLE opportunities for attorneys. The programs will include training for attorneys recently admitted to the bar, as well as candidates for admission. ATTORNEY TRAINING ORDINANCE, Article 4.1. The Director of the Attorneys' Training Center is also planning programs in substantive subjects, such as criminal procedure, immigration and European Union (EU) law, as well as training in legal ethics, the English language, and computer skills. Shortly before the LPRI visit, the Attorneys' Training Center held its first CLE program in Varna on the new Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006) [hereinafter "CRIMINAL PROCEDURE CODE"] and over 150 attorneys were in attendance.

In addition, under Article 8 of the ATTORNEY TRAINING ORDINANCE, attorneys are now required to undergo at least four hours of CLE training each year, although it is not specified who will do the training nor is there a procedure to ensure that the requirement has been fulfilled. While some respondents felt that the requirement was insufficient, it is an important step forward from the previous lack of any mandatory CLE requirement.

Now that the Attorneys' Training Center has been created, the SBC needs to develop a clear strategic vision for developing it into an institution that addresses the substantial CLE needs of the attorney profession. This is particularly important, given the recent changes in the law. Organizationally, it should be noted that the ATTORNEY TRAINING ORDINANCE assigns the principal management responsibilities, such as drafting curricula, budgeting, and financial reporting, to the managing board. ATTORNEY TRAINING ORDINANCE, Article 9.(1-4) and Article 10.(2). This appears to place a significant burden on that body, whose members are practicing attorneys who also

serve on the SBC. Now that the services of a full-time Director have been secured, it may also be an appropriate time to re-evaluate the management structure and responsibilities in order to ensure the most efficient and effective operation of the Attorneys' Training Center.

Under the ATTORNEYS ACT, the local Bar Councils are also required to "run and implement activities related to the improvement of the professional qualification of attorneys." ATTORNEYS ACT, Article 89.11. Thus, CLE is an overlapping responsibility of the Bar Councils and the new Attorneys' Training Center, a situation that calls for cooperation and coordination between the two. In the case of the local Bar Councils, the principal shortcoming is that there is no systematic approach to CLE and programs are put together on a more or less *ad hoc* basis, depending on the local Bar Council. On the other hand, attorneys in the smaller and more remote Attorneys' Colleges express concern that the Attorneys' Training Center will not bring CLE programs to their regions and that travel to Sofia is burdensome. There is also the issue of whether the local Bar Councils should be required to contribute specifically-earmarked funding for the national Attorneys' Training Center. These are questions that the organized bar needs to address in a cooperative fashion in order to provide needed CLE opportunities for its members.

In addition to training by the organized bar, there are several non-governmental organizations (NGOs) and other organizations that provide training for attorneys. One example is the Commercial Law Reform Project (CLRP), a USAID-funded initiative, which delivers commercial law courses to judges and attorneys on such subjects as company law and securities. Another example is the Bulgarian Lawyers for Human Rights Foundation (BLHRF), which has conducted a series of programs on human rights law around the country.

Many of the attorneys interviewed stressed the importance of CLE in view of the constantly changing legislation and the adoption of new acts and codes. In the past year, the National Assembly has adopted a new Criminal Procedure Code and a new Administrative Procedure Code, Promulgated SG No. 30 (Apr. 11, 2006), effective (July 12, 2006) to name two major pieces of legislation. Moreover, Bulgarian attorneys will soon face the challenge of being conversant with EU law. Thus, the establishment of the Attorneys' Training Center comes at a particularly challenging time.

## Factor 15: Minority and Gender Representation

***Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of attorney.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
Both genders and the Turkish minority appear to be well-represented, however, the Roma minority continues to be seriously underrepresented.		

### Analysis/Background:

The Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"] provides that "[a]ll citizens shall be equal before the law" and prohibits the abridgement of that right on the basis of "race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status." CONSTITUTION, Article 6.(2).

In addition, Article 4.(1) of the Protection against Discrimination Act, Promulgated SG No. 86 (Sept. 30, 2003), last amended SG No. 30 (Apr. 11, 2006) [hereinafter "ANTI-DISCRIMINATION ACT"]



prohibits any form of direct or indirect discrimination. ANTI-DISCRIMINATION ACT, Article 4.(1). Article 24 of the ANTI-DISCRIMINATION ACT also encourages employers to hire persons of “less represented gender or ethnic groups” with the goal of “balancing workforces by gender and ethnicity.” *Id.* at art. 24.

Women are well-represented in the legal profession, with over 50% of registered attorneys being women. Women also hold a substantial percentage of the leadership positions of the Bar Councils around the country. There are only three women who currently serve on the Supreme Bar Council, however, over half of the reserve members are women. The Chairperson of the Supreme Disciplinary Court and eight of its members are women. More generally, women are well-represented in other legal professions, with about two-thirds of the judges in the country being women. See, CEELI’s Judicial Reform Index (JRI) of 2004 at 10-11.

Based on the 2001 census, the two principal ethnic minorities in Bulgaria are the Turkish minority, which comprises about 9.4% of the population, and the Roma minority, which comprises around 4.7%. See, National Statistical Institute, *Population at 1/3/01 by Districts and Ethnic Groups*, <http://www.nsi.bg/Census/Ethnos.htm> (last visited Apr. 28, 2006). There are no official statistics regarding the number of attorneys of Turkish or Roma origin, nor is there a reliable way to estimate their numbers. It was the general view of respondents that members of the ethnic Turkish minority are reasonably well represented in the legal profession, although their numbers are perhaps not equal to their percentage in the general population. It was also the consensus of those interviewed that the ethnic Roma minority was poorly represented in the profession. Most respondents felt their scarce numbers to be attributable to cultural and social factors, poor secondary schools, and their resulting lack of a law school education. The prevailing view was that if more members of the Roma minority graduated with university law degrees and sought entry into the legal profession, they would not face discrimination.

## Factor 16: Professional Ethics and Conduct

***Codes and standards of professional ethics and conduct are established for and adhered to by attorneys.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
Attorneys are subject to sufficient ethical standards set out in the law and an attorneys’ ethics code, however, acceptance of the rules and the ethical conduct of attorneys needs improvement.		

### Analysis/Background:

Another significant development since publication of the 2004 LPRI for Bulgaria assessment was adoption by the Supreme Bar Council [hereinafter “SBC”] of the Attorneys Ethics Code (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”]. The ATTORNEYS ETHICS CODE was mandated by Article 121.(1) of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”], which provides that “[t]he Supreme Bar Council shall adopt the Regulations provided for by law, as well as the Attorneys Code of Ethics.” ATTORNEYS ACT, Article 121.(1). Article 131 of the ATTORNEYS ACT also makes it clear that attorneys may be disciplined for violating their professional obligations. “The attorney and junior-attorney shall bear disciplinary responsibility for violations of their duties”. *Id.* at art. 131. In addition, Article 132 states that “Disciplinary violation is a culpable nonperformance of the duties envisaged in the present Act, the attorneys ethics code, the regulations and decisions of the Supreme Bar Council and the decisions of the Bar Councils and General Assemblies, as well as:

1. Breach of attorney’s confidentiality;

2. Omissions, which have harmed clients rights and legal interests;
3. Systematic carelessness or manifest ignorance in completing his/her obligations;
4. Personal direct advertising of professional activity in violation of this Act;
5. Receiving remuneration, which is lower than what is envisaged in the regulation of the Supreme Bar Council for the respective service, unless in this Act and in the regulation such an opportunity is provided for;
6. Acceptance and performance of public defense or special representation in an unlawful manner;
7. Concealing important circumstances on admission to the Bar;
8. Systematic failure of an attorney to perform his/her duties as a member of a governing, disciplinary or controlling body of a Bar.
9. Breach of professional ethics, moral and collegiality towards other attorneys or attorneys partnerships;
10. Undermining the prestige and dignity of the profession and violation of the professional ethics and moral. ATTORNEYS ACT, Article 132 (1-10).

An attorney is also potentially liable for a client's damages arising from his/her breach of the obligations set out in the ATTORNEYS ACT and the ATTORNEYS ETHICS CODE. *Id.* at art. 51.

The ATTORNEYS ETHICS CODE also states that it provides the basis for the discipline of attorneys. For example, Article 2.(1) states that "Rules of professional conduct are designed, through their willing acceptance by those to whom they apply, to ensure the proper performance of an attorney's functions. That is why the failure of an attorney to observe these rules shall result in the last resort in a disciplinary sanction." ATTORNEYS ETHICS CODE, Article 2.(1). However, the discipline imposed must be fair and commensurate with the violation. For example, under Article 2.(2), "Disciplinary proceedings shall be organized in a manner ensuring that they are fair and the relevant sanctions are effective, well-founded and commensurate with the seriousness of the disciplinary offense." *Id.* at art. 2.(2).

The ATTORNEYS ETHIC CODE and certain provisions of the ATTORNEYS ACT provide a reasonably complete set of standards governing the ethical conduct of attorneys practicing the profession. In many instances, the ATTORNEYS ETHICS CODE expands upon an assortment of ethical rules that are contained in the ATTORNEYS ACT. However, the drafters of the ATTORNEYS ETHIC CODE made the conscious decision not to repeat in the ATTORNEYS ETHICS CODE every rule contained in the ATTORNEYS ACT. For example, Article 46 of the ATTORNEYS ACT expressly prohibits an attorney from entering into any type of transaction with his/her client regarding the subject matter of the case, while the ATTORNEYS ETHICS CODE does not contain a specific, corresponding proscription. As a consequence, attorneys must be fully conversant with ethical standards contained in the ATTORNEYS ACT and the ATTORNEYS ETHICS CODE, as well as regulations and decisions of the national and local Bar Councils and General Assemblies.

Substantively, the ATTORNEYS ETHICS CODE contains the traditional civil law protections of client confidences, providing that the attorney must maintain the client's secrets without any time limitations. ATTORNEYS ETHICS CODE, Article 5. The only enumerated exception is that the attorney may disclose confidential information to the extent necessary to protect the attorney in penal, disciplinary and other proceedings. *Id.* at art. 5.(4). The ATTORNEYS ETHICS CODE expands on provisions in Articles 42.(1)-(4) of the ATTORNEYS ACT pertaining to advertising, and allows an attorney to publicize certain limited information about his/her professional activities by any form of media, including radio, television and electronic communications. *Id.* at art. 8.(2). An attorney is not allowed to compare his/her services with that of other attorneys, promise specific results, or advertise the names of his/her clients. *Id.* at art. 8.(3). Similarly, an attorney may not solicit potential clients absent a family or prior professional relationship nor can he/she use an agent to

do so. *Id.* at art. 8.(4). The ATTORNEYS ETHICS CODE contains basic conflict of interest rules, which include prohibiting the representation of clients with conflicting interests, barring successive conflicts (i.e., representing a new client when it might risk the breach of confidence of a former client), requiring the consent of all interested parties before accepting a representation where there is a risk of a conflict, and imputing conflicts of interest to other members of an association of attorneys. *Id.* at art. 13. The ATTORNEYS ETHICS CODE also contains rules requiring attorneys in appropriate circumstances to inform their clients about the suitability of settlement or resort to alternate dispute resolution (ADR) or the availability of legal aid. *Id.* at art. 18. The ATTORNEYS ETHICS CODE reiterates the requirement in Article 50 of the ATTORNEYS ACT that attorneys must obtain professional liability insurance. *Id.* at art. 20. Finally, the ATTORNEYS ETHICS CODE contains a host of other rules, including provisions pertaining to fees (e.g., an attorney may not share fees with a non-attorney), *Id.* at arts. 14-17, client funds *Id.* at art. 19, relations with the courts *Id.* at arts. 21-24, and relations between attorneys *Id.* at arts. 25-34.

While implementation of the ATTORNEYS ETHICS CODE is a significant achievement, the acceptance of the ATTORNEYS ETHICS CODE as the principal set of governing ethical standards of the profession is another matter. During the LPRI interviews, some respondents stated that most attorneys in their district had not even read the ATTORNEYS ETHICS CODE. Another attorney stated that he was aware that the ATTORNEYS ETHICS CODE had been implemented, but had no reaction to it positively or negatively. Some respondents expressed the view that disciplinary action could only be based on a violation of the ATTORNEYS ACT, not a breach of the ATTORNEYS ETHICS CODE, despite clear statutory language to the contrary. Even many experienced practitioners did not appear to recognize the broader role the ATTORNEYS ETHICS CODE could play in fostering public respect for the attorneys' profession.

In practice, there is a general perception that many attorneys do not consistently adhere to high ethical standards and engage in improper conduct. One of the contributing factors cited is the fact that until recently attorneys were only disciplined for failure to pay their dues, despite the fact that the proliferation in the number of attorneys led to increased competition for clients and a likely increase in the violation of basic ethical standards. In the smaller cities and towns, Bar Councils frequently remain unwilling to damage relationships with their colleagues by rigorously enforcing ethics rules. There is also a public perception that many attorneys are corrupt. These observations indicate that a more vigorous application of ethical rules should be undertaken. The profession would also benefit from a more detailed set of rules and published commentary on the ethical precepts in the ATTORNEYS ACT and ATTORNEYS ETHICS CODE to assist attorneys in better understanding and appreciating their ethical obligations. Finally, these observations reinforce the need for legal ethics courses both in the law schools and as part of the regular continuing legal education (CLE) curriculum at the Attorneys' Training Center.

## Factor 17: Disciplinary Proceedings and Sanctions

***Attorneys are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
The law sets out a well-defined disciplinary structure and the procedures are fair. However, disciplinary enforcement varies considerably around the country and in some areas is virtually non-existent.		

Analysis/Background:

The Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”] specifies that attorneys are subject to discipline for violation of their duties. ATTORNEYS ACT, Article 131. The types of conduct which constitute disciplinary violations are set out in Article 132 of the ATTORNEYS ACT (see preceding discussion of Factor 16).

The penalties for disciplinary violations include a reprimand, a fine of from one to eight monthly salaries (i.e., about US \$99 to US \$795), suspension of the right to be elected to the governing bodies of the bar for up to three years, suspension of the right to practice law for a period of three to 18 months, and suspension of the right to practice law for five years in the case of repeated violations. ATTORNEYS ACT, Article 133.(1). The Chairperson of the Disciplinary Court is also authorized to issue a personal admonishment to the subject attorney in the case of a minor infraction. *Id.* at art. 133.(4).

Disciplinary proceedings are conducted by Disciplinary Courts in accordance with detailed procedures specified in Articles 136-146 of the ATTORNEYS ACT. See LEGAL PROFESSION REFORM INDEX for Bulgaria (2004) at 33-34 for a complete description of these procedures. To summarize, upon receipt of a written complaint, the Bar Council or the Supreme Bar Council (SBC) notifies the subject attorney of the allegation and allows him/her seven days to provide an explanation. ATTORNEYS ACT, Article 137.(1). If the Bar Council concludes that there is a reasonable assumption that a violation occurred, it appoints a member of the Bar Council to investigate the complaint and report the results to the Bar Council. *Id.* at art. 137.(2). Based on the report, the Bar Council then decides whether to initiate disciplinary proceedings. *Id.* at art. 137.(5). If the decision is made to institute disciplinary proceedings then the Bar Council appoints an investigator or Council member to prosecute the case before the Disciplinary Court. *Id.* at art. 137.(7). The Disciplinary Court, which receives evidence and holds a hearing, decides both guilt and punishment in a reasoned decision. *Id.* at arts. 138.(2), 139.(5), and 140. The accused attorney is permitted legal representation throughout the proceedings. *Id.* at art. 139.(4). Either party may appeal the result to the Supreme Disciplinary Court [hereinafter “SDC”]. *Id.* at art. 141.(1). In cases involving complaints against persons in certain national and local Bar Council leadership positions, the SDC hears the matter as a court of first instance and its decision can be appealed to the Supreme Court of Cassation (SCC). *Id.* at arts 129.(1) and 130.(2).

While the disciplinary process set out in the law is fair and adequate, the views on the quality and effectiveness of the attorney disciplinary system in practice are mixed. Some respondents expressed the view that the disciplinary system works reasonably well. Others see the system as little more than a mechanism to enforce the payment of bar dues, since such cases comprise a significant percentage of the disciplinary cases that are instituted. Several respondents noted that the quality of disciplinary enforcement varies substantially from region to region.

One significant issue is the lack of uniformity in the sanctions imposed for the same violation. The local Disciplinary Courts are independent and free to resolve misconduct cases and impose penalties without any reference to uniform standards. In this regard, the SDC believes that it does not have the authority to issue interpretive statements on disciplinary issues, a practice that would assist in fostering some uniformity. The result is that different attorneys may incur disparate sanctions for the same violation, depending on the particular Disciplinary Court or even disciplinary panel that hears the case. It should be noted that one of the disadvantages of a national system of standardized penalties is that local disciplinary authorities are more keenly aware of various aggravating and mitigating factors that should be considered in imposing a penalty for a particular disciplinary violation. For example, an attorney who inadvertently breaches his client’s confidentiality should be sanctioned differently from one who intentionally discloses client secrets for personal gain. On the other hand, widely divergent penalties for the same disciplinary violation are not only unfair, but they undermine respect for the attorney disciplinary system within the profession and with the public at large. The need for more uniformity is an issue that needs to be addressed. One possibility the national bar leadership could consider is the issuance of non-binding guidelines, which set out a range of penalties for various disciplinary violations. The local Disciplinary Courts could then impose discipline within

that range, with the severity of the penalty determined by aggravating or mitigating factors present in the particular case. The SDC could promote such a system through its hearing of disciplinary appeals. This would achieve some degree of uniformity, while taking into account the specific local circumstances that might be involved.

In September 2005, members of the SDC and the Disciplinary Courts from around the country held a conference at which uniformity of sanctions and other issues were discussed. An important initiative to come out of the meeting was that the local Disciplinary Courts will now provide statistical data to the SDC twice a year on the number of disciplinary cases initiated and the results. Another significant decision was that the SDC is to begin publishing important disciplinary decisions, together with its reasoning, in the national bar magazine. This initiative will provide badly needed guidance to the local Disciplinary Courts, and the attorney community at large. Separately, the SDC has been working with the Attorneys Training Center to develop a set of hypothetical disciplinary cases as part of the Attorneys' Training Center's ethics training program. The plan is to publish a short commentary explaining how each hypothetical situation was resolved and the rationale for the decision.

Attorney disciplinary proceedings are not open to the public. Many attorneys feel that it is unfair to damage an attorney's reputation by publicizing an allegation when the Disciplinary Court may well determine that the allegation is without merit. There is less concern expressed about announcing the imposition of a disciplinary sanction, and the ATTORNEYS ACT specifically provides that disciplinary violations resulting in a suspension are required to be published in the State Gazette. ATTORNEYS ACT, Article 144.(2). However, the announcement contains only the name of the attorney sanctioned, and the period of suspension, and does not provide a description of the case or the Disciplinary Court's reasoning.

One obvious weakness in the disciplinary structure is a statute of limitations provision in the ATTORNEYS ACT which states that "[d]isciplinary prosecution shall be voided by limitation where no penalty has been imposed within one year after the commission of the violation, or in case of the wrongdoer's death." *Id.* at art 134.(1). This provision potentially allows unethical attorneys to escape sanction under a number of circumstances, including the situation where the client does not discover the misconduct (e.g., theft of client funds early in a lengthy case) until after a year has elapsed. Reportedly, Disciplinary Courts have interpreted this provision as simply requiring the institution of disciplinary proceedings, not the imposition of the penalty, within one year. A more reasonable rule would start the running of the one-year time limit from the date of discovery of the offense, a needed change that would require a legislative amendment.

The reporting of statistical data on the work of Disciplinary Courts is an important step forward. However the data collected for 2005 suggests a lax system of disciplinary enforcement in certain regions, as well as deficiencies in the information gathering process. In fact, a total of 15 of the 27 Disciplinary Courts reported no disciplinary cases for 2005. In addition, the data were reported in varying formats and some of the information was either incomplete or not provided. For the most part, the data cover only cases where formal disciplinary proceedings were instituted and do not reveal how many initial complaints were actually filed with the Bar Councils. The entire system would benefit from improved reporting to obtain a more accurate picture of the work of the local Disciplinary Courts. As for the SDC, it reported that it handled 48 disciplinary cases in 2005.

## IV. Legal Services

### Factor 18: Availability of Legal Services

*A sufficient number of qualified attorneys practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.*

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
Bulgaria has a sufficient number of qualified attorneys to meet the needs of individuals and businesses and they are adequately distributed among the regions of the country.		

#### Analysis/Background:

By virtually all accounts, there are a sufficient number of attorneys in Bulgaria to provide the population with access to legal services. Based on data published in the State Gazette by the Supreme Bar Council [hereinafter "SBC"] for 2006, there are presently 11,310 attorneys and junior-attorneys registered in the Attorneys' Colleges, or roughly one for every 700 people in the country. See Annual Report for the SBC, SG No. 2 (Jan. 6, 2006).

As for geographic distribution, Sofia, the country's capital and governmental center, has nearly 4,500 attorneys, or about 40% of the total. The city also serves as the headquarters for many domestic and foreign companies, as well as the central institutions and the high courts. There are also large concentrations of attorneys in Bulgaria's second and third largest cities, Plovdiv and the Black Sea port of Varna. Varna, a trade, industrial, and commercial center, recently moved past Plovdiv with the second largest contingent of attorneys in the country. Outside the major cities, the number of attorneys tends to balance with the demand for legal services with the number decreasing in areas that are less prosperous economically. The following table shows the distribution of attorneys by district and shows the approximate ratio of attorneys to the district population. The 2006 attorney numbers are compared to the population numbers in the 2001 census, so the ratios are inexact.

#### Attorney Distribution

<b>District</b>	<b>Number of Attorneys</b>	<b>Attorneys: Population</b>
Blagoevgrad	318	1: 1,073
Burgas	548	1: 773
Dobrich	183	1: 1,176
Gabrovo	104	1: 1,386
Haskovo	342	1: 811
Kardjali	70	1: 2,343
Kyustendil	240	1: 678
Lovech	108	1: 1,574
Montana	195	1: 935
Pazardjik	261	1: 1,191
Pernik	192	1: 781
Pleven	217	1: 1,438
Plovdiv	1,023	1: 700
Razgrad	96	1: 1,588
Ruse	322	1: 827
Shumen	158	1: 1,294
Silistra	89	1: 1,596

Sliven	178	1: 1,227
Smolyan	89	1: 1,574
Sofia	4,467	1: 324
Stara Zagora	365	1: 1,016
Targovishte	91	1: 1,513
Varna	1,056	1: 438
Veliko Turnovo	199	1: 1,474
Vidin	137	1: 950
Vratsa	152	1: 1,599
Yambol	110	1: 1,419
<b>TOTAL</b>	<b>11,310</b>	<b>1: 701</b>

The above totals do not reflect any dramatic changes from the comparable numbers reported in the 2004 LPRI for Bulgaria assessment. Based on present LPRI assessment, the consensus is that attorneys are adequately distributed geographically around the country to provide the timely and competent legal services that the respective communities require.

## Factor 19: Legal Services for the Disadvantaged

*Attorneys participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.*

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↑</b>
Ambitious new legal aid legislation holds the promise of a significant improvement in the delivery of legal services to disadvantaged persons, although it is too early to assess the full impact of the law.		

### Analysis/Background:

The right to counsel, as well as the provision of legal counsel for indigent persons, is established in the Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005)), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"] and various international agreements that are treated as part of Bulgaria's domestic legislation. See 2004 LPRI for Bulgaria, at 37-38, for a detailed discussion of these authorities. To give one prominent example, Article 56 of the CONSTITUTION declares that "[e]very citizen, whose rights or legitimate [legal] interests are violated or jeopardized, shall have a right to a remedy. Appearing before any institution of the State, every citizen may be represented by legal counsel." CONSTITUTION, Article 56.

Prior to 2006, there was a de-centralized and much-criticized system for providing legal aid to those who could not afford to pay for an attorney. Private attorneys were permitted to provide free legal assistance to persons entitled to support funds or having financial difficulties, however, there was no requirement that they do so nor was there a tradition or organized system for providing *pro bono* services to the poor. See Attorneys Act, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"], Article 38.(1) 1-3. The public defender system, under which counsel was appointed by the court in certain criminal (and a few civil) matters, was cumbersome and not well-regarded. The courts frequently criticized the delay in receiving the name of the recommended attorney from the Bar Council or questioned the qualifications of the attorney to handle the matter. Attorneys complained that fee payments, which were drawn from the court budget, were often late and below the SBC's "Regulation No. 1 of 9 July 2004 related to the

Minimum Rate of Attorneys' Remuneration", Promulgated SG No. 64 (July 23, 2004), amount that was required to be paid under the ATTORNEYS Act. Although there were no published statistics, a substantial percentage of criminal defendants were tried without legal counsel.

On January 1, 2006, the new Legal Aid Act, Promulgated SG No. 79 (Oct. 4, 2005), effective (Jan. 1, 2006) [hereinafter "LEGAL AID ACT"] came into effect. This landmark legislation revamps and centralizes the system for regulating and administering legal aid in the country. The LEGAL AID ACT authorizes the Minister of Justice (MOJ) to "elaborate, coordinate and conduct the state policy in the sphere of legal aid", and goes on to establish a National Legal Aid Bureau to organize the system of legal aid with the Bar Councils. *Id.* at arts.6.(1) and 6.(2). The National Legal Aid Bureau is declared to be an independent, publicly-financed state agency and "a second-level spending unit with the Minister of Justice, with a head office in Sofia." *Id.* at art. 6.(3). It has a separate budget. *Id.* at art 6.(4). In a regulation issued by the Council of Ministers governing its structure, composition and functions, the new agency is designated as the National Legal Aid Bureau [hereinafter "NLAB"]. Regulations of the Organization and Activities of the National Legal Aid Bureau, Promulgated SG No. 5 (Jan. 17, 2006) [hereinafter "NLAB REGULATION"].

Structurally, the NLAB is governed by a Chairperson and a Deputy Chairperson appointed by the Prime Minister, and three members elected by the Supreme Bar Council [hereinafter "SBC"]. LEGAL AID ACT, Article 11. The members of the NLAB must have a university degree in law, be licensed to practice, and have practiced for at least five years. *Id.* at arts. 13.(1-2). They serve a three-year term. *Id.* at art. 12. The Chairperson appoints a General Secretary to manage, coordinate and control the activities and administration of the NLAB. NLAB REGULATION, Article 22(1). The responsibilities of the NLAB and its Chairperson include preparing the legal aid budget, maintaining a National Legal Aid Register of attorneys, providing guidance, conducting inspections, filing an annual report, and controlling and dispensing legal aid funds. LEGAL AID ACT, Articles 8 and 17.

Article 21 of the LEGAL AID ACT specifies the following types of legal aid provided for under the law:

1. pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings or to bring a case before a court;
2. preparation of documents for bringing a case before a court;
3. representation in court by legal counsel;
4. representation upon detention under Article 63 [pertaining to police detention of persons for various reasons] of the Ministry of Interior Act. LEGAL AID ACT, Article 21.

In order to obtain legal aid under items 1 or 2, the general rule is that the person must satisfy the eligibility requirements for state support benefits. LEGAL AID ACT, Article 22. In the case of court representation under Article 21.(3), the law states that legal aid is to be provided where legal representation is required by statute, *Id.* at art. 23.(1), or in cases "in which a suspect, an accused, a person incriminated, a defendant, or a party to a criminal, civil or administrative case is unable to pay for the assistance of an attorney, wishes to have such assistance, and the interests of justice require this." *Id.* at art. 23.(2). Article 24 specifies the grounds for refusing legal aid, including situations where it is not justified in terms of the benefit such aid would confer, where it is "manifestly unfounded, unjustified or inadmissible", and in certain commercial and tax matters. *Id.* at art. 24.

The law specifies that the Bar Councils are to organize the granting of legal aid within their respective geographical jurisdictions. *Id.* at art. 18. The Bar Councils issue opinions on the applications of attorneys for entry into the National Legal Aid Register and appoint attorneys from the register to handle cases within their district. *Id.* at art. 18 (1) and (3). They are required to



ensure that the appointed attorney has the necessary qualifications and experience to handle the case or matter. *Id.* at art. 18.(3). Under Article 44.(1) of the ATTORNEYS ACT, “An attorney, who has been entered in the National Legal Aid Register, shall be obligated to provide legal aid according to the procedure established by the Legal Aid Act, where the said lawyer has been designated for this”. ATTORNEYS ACT, Article 44.(1). The rate of remuneration for such representation is set by the Ordinance for the legal aid payments adopted by the Council of Ministers. The Bar Councils are also responsible for verifying and authenticating the time sheet of the attorney who performs the legal aid services and proposing the fee depending upon the quality and complexity of services provided. LEGAL AID ACT, Articles 18.(5) and 38.(2). The appointed attorney is also entitled to expenses. *Id.* at art. 37.(3). The proposed remuneration is considered by the NLAB, which can increase or decrease the proposed payment. Ordinance for the Payment of Legal Support, Adopted SG No. 5 (JAN. 17, 2006) [hereinafter “PAYMENT OF LEGAL SUPPORT ORDINANCE”] Article 7.(2). Payment is made by the NLAB. *Id.* at art 7.(3). In addition, the Bar Councils are to be compensated for their work in administering the legal aid program. LEGAL AID ACT, Article 19.

The enactment of the LEGAL AID ACT and the establishment of the NLAB promise to improve significantly the delivery of legal aid services to the disadvantaged. The law is ambitious in scope, providing for representation not only in criminal cases, but potentially in most civil and administrative matters as well. *Id.* at art. 21. The law also authorizes appointment of counsel for pre-litigation advice. *Id.* at art. 21.(1). Reportedly, the law came into force on a fast track and there was little time for advanced organizational planning. Nevertheless, the five-member governing board has been selected and it has moved quickly and efficiently to implement the new system. At the time of the LPRI interviews, the NLAB was seeking office space and was in the process of hiring administrative and legal staff. Nonetheless, the NLAB had implemented the National Legal Aid Register and over 3,000 attorneys, or about 25% of the attorneys in the country had registered and the first legal aid fees had been disbursed under the system.

One of the larger challenges facing the NLAB and the new system is funding. The initial 2006 budgetary allocation for the program was 3.5 million leva (approximately US \$2.2 million), together with approximately 1.5 million leva (approximately US \$931,000) to cover the costs of establishing and administering the NLAB. At the time of the LPRI interviews, the MOJ was reportedly planning to allocate an additional 3 million leva (approximately US \$1.9 million) for the payment of legal aid services and expenses. However, given the breadth of services covered under the legislation, it is doubtful that the addition of this allocation would be sufficient to fund the system.

The creation of the NLAB as an autonomous state body should preserve the independence of the attorneys who are responsible for delivering legal services to the disadvantaged. Notably, the board members of the NLAB must be licensed to practice law and three of the five members are elected by the SBC. While the MOJ is given responsibility to coordinate legal aid policy and funding for the NLAB comes out of the MOJ’s budget, the system appears to be reasonably calculated to avoid possible unreasonable influence or control over the legal profession by the state.

The establishment of a centralized legal aid authority has the potential to eliminate many of the problems under the former system and should promote consistency in the delivery and payment for legal aid services. As noted earlier, the system is receiving broad support with the participation of a substantial number of attorneys. An important issue will be whether the NLAB is able to process and audit the large volume of claims for legal aid services and expenses, and perform its other functions, under its allocated budget. Another significant issue will be determining eligibility for legal aid, and the NLAB may want to consider issuing eligibility guidelines that go well beyond the general language in the statute. The role of Bar Councils is also not without issue, since many attorneys in the past did not believe that they have been impartial in their nominations of attorneys to handle cases of indigent litigants and defendants. This is an area where specific written guidelines, as well as transparency in the appointment

process, could help in promoting objectivity and integrity in the appointment of legal aid providers. There is also no guarantee regarding the quality of legal aid that will be received. All this being said, the new legal aid system has the strong support of the attorney profession and should improve access to justice on the part of the disadvantaged.

As noted in the discussion under Factor 8, there are eight legal clinics operating in the country, which provide legal services to disadvantaged clients.

## Factor 20: Alternative Dispute Resolution

***Attorneys advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
Attorneys are ethically required to advise their clients of the availability of alternative dispute resolution [hereinafter “ADR”] in appropriate circumstances, although it is unclear how consistently this is being done. The country has well-established arbitration tribunals and a 2004 mediation law has accelerated the establishment of mediation centers.		

### Analysis/Background:

Article 18.(1) of the Attorneys Ethics Code adopted by the Supreme Bar Council (Decision # 324 of 8 July 2005) [hereinafter “ATTORNEYS ETHICS CODE”] states that “[a]n attorney shall strive to achieve an effective resolution in his/her client’s dispute. An attorney shall advise his/her client on the suitability both of settlement and possible resort to ADR.” ATTORNEYS ETHICS CODE, Article 18 (1). Thus, an attorney is ethically bound to advise his/her clients of the availability of ADR, which would include possible resort to *ad hoc* arbitration or mediation in appropriate circumstances. It is unclear how many attorneys are actually complying with the requirement, although a number of respondents expressed the view that many attorneys do not advise their clients of such alternatives.

Bulgaria has a wide variety of ADR mechanisms and tribunals whereby persons may settle disputes without resort to the formal judicial process. Because court proceedings can involve lengthy and costly litigation through three separate judicial instances, ADR offers an attractive alternative to those who wish to have their disputes resolved in a timely fashion.

The major development in the area of ADR over the past two years has been the enactment of the Mediation Act, Promulgated State Gazette No. 110 (Dec. 17, 2004) [hereinafter “MEDIATION ACT”] and the implementation of mediation procedures in secondary legislation provided for under the law. The MEDIATION ACT provides a legal basis and structure for mediation activities, which had been proliferating even in the absence of a specific statutory framework. The MEDIATION ACT assigns primary responsibility for overseeing mediation activities to the Ministry of Justice (MOJ). The MOJ has adopted standards on the training of mediators, Order No. LS-04-363 (June 17, 2005), implemented procedural and ethical rules for the conduct of mediators, Order No. LS-04-364 (June 17, 2005), and adopted rules and procedures pertaining to a uniform registry of mediators, Order No. LS-04-365 (June 17, 2005). The MEDIATION ACT makes mediation an option in civil cases and administrative cases, as well as certain criminal cases.

Mediation services are now widely available in the large and medium-sized cities around Bulgaria, usually with support from non-governmental organizations (NGOs). There are several mediation centers that mediate commercial disputes. Other mediation centers handle disputes in

the areas of domestic relations, labor law, property and neighborhood disagreements, and consumer complaints to list some of the more common subjects.

Generally, the courts have been receptive to mediation initiatives since they offer some relief from heavy judicial caseloads. On the other hand, some attorneys reportedly feel threatened by the growth in mediation services. The concern is primarily economic – they feel that mediators are depriving them of potential legal fees for representing clients in court. Although attorneys are required to advise clients of the suitability of ADR under Article 18.(1) of the ATTORNEYS ETHICS CODE, a number of persons interviewed did not feel that this was taking place. In fact, some attorneys reportedly argue that since mediation is not specifically provided for in the Code of Civil Procedure of Bulgaria, Promulgated SG No. 12 (Feb. 8, 1952), last amended SG No. 17 (Feb. 24, 2006) [hereinafter “CIVIL PROCEDURE CODE”], the practice should not be allowed. Most respondents expressed the view that as attorneys become more familiar with mediation, the more they will embrace the positive role it can play in the functioning of the legal system.

Bulgaria also has a well-developed set of arbitration laws and tribunals, particularly in the areas of commercial and labor law. The development of these statutes and tribunals was discussed in detail in the 2004 LPRI for Bulgaria assessment, and will only be briefly summarized here. The oldest and most well established of these is the Court of Arbitration of the Bulgarian Chamber of Commerce and Industry [hereinafter “BCCI”]. Under the LAW ON INTERNATIONAL COMMERCIAL ARBITRATION, Promulgated SG No. 60, (Aug. 5, 1988), last amended SG No. 102 (Nov. 1, 2002) [hereinafter “ARBITRATION LAW”] disputes between Bulgarian and foreign persons and businesses may be resolved before the BCCI Arbitration Court. Disputes referred to it typically involve contractual, commercial, or civil law matters that come before the tribunal pursuant to arbitration clauses in business agreements. Other disputes come before the BCCI Arbitration Court on an *ad hoc* basis. Collective labor disputes are resolved through arbitration and mediation by the National Institute for Reconciliation and Arbitration under the Labor Ministry, pursuant to authority contained in the SETTLEMENT OF COLLECTIVE LABOR DISPUTES ACT, Promulgated SG No. 21 (Mar. 13, 1990), last amended SG No. 25 (Mar. 16, 2001). There are also provisions setting out procedures for settling procurement disputes by arbitration under Article 20 of the LAW FOR PUBLIC PROCUREMENT, Promulgated SG No. 28 (Apr. 6, 2004), last amended SG No. 18 (Feb. 28, 2006), and provisions for voluntary arbitration of certain property disputes contained in Article 9 of the CIVIL PROCEDURE CODE.

As noted in the 2004 LPRI for Bulgaria assessment, commercial arbitration is well-accepted by commercial attorneys who frequently include arbitration clauses in the business agreements they draft. There is also a degree of certainty with an arbitration decision, since under Article 47 of the ARBITRATION LAW appeal of an arbitration award goes directly to the Supreme Court of Cassation (SCC) and may be set aside only in extreme circumstances. ARBITRATION LAW, Article 47. One drawback is that commercial arbitration is only available in Sofia and a couple of the other large cities. The BCCI Arbitration Court remains a frequent choice of attorneys and businesses, although foreign concerns often insist on the designation of a tribunal outside of the country.

## V. Professional Associations

### Factor 21: Organizational Governance and Independence

***Professional associations of attorneys are self-governing, democratic, and independent from state authorities.***

<b>Conclusion</b>	<b>Correlation: POSITIVE</b>	<b>Trend: ↔</b>
The Bulgarian bar is independent, democratic and self-governing, and other associations that include attorneys are also free of governmental interference.		

#### Analysis/Background:

The independent and self-governing nature of the organized bar in Bulgaria is guaranteed in Article 134.(1) of the Constitution of the Republic of Bulgaria, Promulgated State Gazette No. 56 (July 13, 1991) effective (July 13, 1991), amended and supplemented SG No. 85 (Sept. 26, 2003), SG No. 18 (Feb. 25, 2005), SG No. 27 (Mar. 31, 2006) [hereinafter "CONSTITUTION"]. Article 134.(2) of the same instrument specifies that the organization and procedures governing the bar shall be set out by statute, a mandate that is fulfilled by the Attorneys Act, Promulgated SG No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"]. In order to engage in the independent practice of law, attorneys must belong to an Attorneys' College in one of the 28 districts in Bulgaria (the Sofia district and Sofia city district are combined for this purpose, so there are only 27 Attorneys' Colleges). ATTORNEYS ACT Article 78.(1). Attorneys in their respective districts meet in General Assemblies to elect a Bar Council, a Disciplinary Court, and a Supervisory Council, as well as the chairpersons of the Bar Council and Disciplinary Court. *Id.* at arts. 80-85, and 100. Meetings of the General Assemblies are announced in the State Gazette and the law sets out procedures regarding the agenda, quorum requirements, and voting in person or by proxy. *Id.* Decisions are made in open voting (except for the election of members of the Bar Council) by a simple majority of those present. *Id.* at arts 81.(5) and (8). Articles 99-110 set out detailed procedures to ensure that elections are free, fair and transparent. The General Assembly also elects delegates to the National General Assembly of Attorneys, with representation (one delegate per 40 attorneys) proportionate to the numbers of attorneys in the various Attorneys' Colleges. *Id.* at arts. 82.(6) and 112.(1).

On the national level, the National General Assembly of Attorneys meets and elects the members and Chairpersons of the Supreme Bar Council [hereinafter "SBC"] and Supreme Disciplinary Court [hereinafter "SDC"], as well as the members of the Supreme Supervisory Council [hereinafter "SSC"], under comparable procedures set out in Articles 111-116. The SBC, which has 15 voting members and 10 reserve members, has broad legal and persuasive power to lead, regulate, oversee and protect the interests of the legal profession. Under its statutory authority, the SBC has instituted and conducted the bar examination for attorneys entering the profession, adopted the Attorneys Ethics Code, and established the Attorneys Training Center for providing continuing legal education (CLE). The SBC also exercises budgetary authority, including the establishment of dues; rules on election complaints and protests of decisions of the local General Assemblies and Bar Councils; maintains a uniform registry of attorneys; and provides comments and proposals on existing or proposed legislation and administrative interpretations. ATTORNEYS ACT, Articles 121 and 122. The SBC and its Chairperson are also the acknowledged leaders of the profession and represent it and the interests of attorneys before the National Assembly, the government, the judiciary and the public.

The SSC inspects the financial activities of the SBC and controls the activities of the local Supervisory Councils. ATTORNEYS ACT, Article 127. The SDC hears appeals of decisions of the

local Disciplinary Courts as a court of review, and tries disciplinary cases of high local and national bar officials as a court of first instance. *Id.* at art. 129.

As reported in the 2004 LPRI for Bulgaria assessment, there is no evidence or suspicion that the elections and proceedings described above differ in actual practice from what is specified under the law. There was no suggestion that the MOJ or any other government entity has attempted to take a role in the election or independent operation of the bar. Respondents reported no incidents of financial pressure or undue administrative burdens imposed by the government or its representatives. As discussed under Factor 19, the MOJ does play a role in establishing and coordinating state policy in the area of legal aid; however, the actual administration of the legal aid program is the responsibility of an independent state body governed by legal professionals and attorneys. Respondents did not express any concerns that such an arrangement could jeopardize the independence or governing structure of the bar. In addition, the role of the courts in reviewing actions of the bar is minimal. The SCC has limited authority to review certain actions taken by the bar, such as appeals of admission decisions or disciplinary decisions involving high bar officials. ATTORNEYS ACT, Articles 7.(5) and 130.(2).

## Factor 22: Member Services

***Professional associations of attorneys actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
The leadership of the organized bar effectively promotes the interests of the profession at the national level, and has implemented ethical standards and fostered educational opportunities through an attorneys' training center. Local bars also provide member services to a varying degree.		

### Analysis/Background:

The Supreme Bar Council (hereinafter "SBC") and the district Bar Councils actively promote the interests of the profession and provide a number of membership services to attorneys. Under the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"], the SBC has broad powers and responsibilities, including governance and administrative responsibilities; administration of a bar examination; organization and operation of an attorneys' training center; providing opinions on draft legislation and proposing improvements in existing laws; adoption of a code of ethics; and maintaining a uniform registry for attorneys and attorney partnerships. ATTORNEYS ACT, Articles 8, 28, 121, and 122. More broadly, the SBC, through its Chairperson, represents the profession and serves as a strong and effective advocate for individual attorneys and the legal profession. One example of the SBC's role as an advocate for the profession concerned the debate and enactment of the Legal Aid Act, Promulgated SG No. 79 (Oct. 4, 2005), effective (Jan.1, 2006) [hereinafter "LEGAL AID ACT"] in the National Assembly. It was due in significant part to efforts by the SBC that the law provides that the makeup of the managing board of the National Legal Aid Bureau shall consist of a majority of practicing attorneys appointed by the SBC.

In addition to its external activities, many of the SBC's initiatives have related to internal governance and improvement of attorney standards as mandated by the ATTORNEYS ACT. As mentioned in the discussion of Factor 16, the SBC took a major step toward improving professional standards by overseeing the drafting and adoption of the Attorneys Ethics Code adopted by the Supreme Bar Council (Decision # 324 of 8 July 2005) [hereinafter "ATTORNEYS

ETHICS CODE”]. The SBC played an active role by establishing a working group of attorneys, who consulted a variety of domestic and foreign resources in preparing an initial draft. A revised draft was later circulated to the Bar Councils and published on the internet to make it widely available for comment. The SBC later organized and chaired a debate on the draft code at a meeting attended by the leadership of all 27 Attorneys’ Colleges prior to its adoption in July 2005. In other areas, the SBC has moved to improve standards for entry into the profession by organizing and conducting a rigorous and comprehensive bar examination. In order to meet the substantial educational challenges facing the profession, the SBC has established an Attorneys’ Training Center. As part of that initiative, the SBC is involved in developing a badly needed training module on legal ethics. One undertaking of the SBC that remains to be completed is the implementation of a national electronic register of attorneys that can be accessed online.

The local Bar Councils also provide member services, including some training courses on an *ad hoc* basis. Some of the Bar Councils also obtain information for their members on professional liability insurance providers and their rates. Many Bar Councils maintain computers in their offices and subscribe to electronic legal databases which can be accessed by their members. Local Bar Councils frequently mediate disputes between attorneys or attorneys and their clients and a few local Bar Councils maintain libraries. Moreover, as described in the discussion of Factor 19, the Bar Councils have recently assumed significant responsibility in administering the legal aid program. Nevertheless, the quality of services delivered by local Bar Councils to their members varies from region to region. A couple of attorneys interviewed during the LPRI assessment commented that they felt that they paid their bar dues and got very little in return.

ABA/CEELI has a Model Local Bar Council program in Bulgaria that monitors and supports the activities of several of the local Bar Councils and Attorneys’ Colleges. Since 2004, the program has expanded to include 12 local Bar Councils around the country. This initiative, which includes the supply of equipment (e.g., copy machines, PCs, fax machines) and the co-sponsoring of training programs, has assisted the Model Bar Councils in delivering better services to their memberships.

## Factor 23: Public Interest and Awareness Programs

***Professional associations of attorneys support programs that educate and inform the public about its duties and rights under the law, as well as the attorney’s role in assisting the public in defending such rights.***

Conclusion	Correlation: NEUTRAL	Trend: ↑
The organized bar does not have any established public awareness programs, although some <i>ad hoc</i> activities are now taking place. Human rights organizations continue to have public outreach campaigns.		

### Analysis/Background:

As noted in the 2004 LPRI for Bulgaria assessment, there is no statutory provision that makes public education regarding a citizen’s rights and duties under the law the responsibility of the organized bar. The obligation for such activities derive from Principle 4 of the United Nations *Basic Principles on the Role of Lawyers* [hereinafter “UN BASIC PRINCIPLES”], which states that “[g]overnments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.” UN BASIC PRINCIPLES, Principle 4.

The Supreme Bar Council [hereinafter “SBC”] and the local Bar Councils have traditionally not viewed such public education and outreach programs as their responsibility. It was their view that the well-educated Bulgarian citizenry was fully aware of their legal rights, noting that human rights organizations in Bulgaria were active in advising persons of their rights and that decisions of the European Court of Human Rights (ECHR) were widely publicized in the news media. However, over the past few years this view has been changing and there has been a gradual increase on the part of the profession in public awareness activities. For example, the Chairperson of the SBC gives frequent press interviews and these sessions on occasion educate the audience on the role of attorneys in protecting the legal rights of citizens. In addition, District Bar Councils have organized programs to celebrate National Attorneys’ Day and there are a number of newspaper advice columns in which attorneys respond to citizens’ questions about the law. Although aimed primarily at business development, mediation centers air the availability of legal mediation services on radio and TV, which has the subsidiary effect of informing persons of the role of attorneys in protecting legal rights.

Currently, the organized bar does not have a systematic program to educate the public about their rights, as well as the attorney’s role in protecting those rights. However, now that the SBC has implemented a number of major initiatives mandated by law (e.g., the bar examination, attorneys ethics code, and Attorneys’ Training Center), it will have the opportunity to devote more attention to public interest and awareness programs.

## Factor 24: Role in Law Reform

***Professional associations of attorneys are actively involved in the country’s law reform process.***

<b>Conclusion</b>	<b>Correlation: NEUTRAL</b>	<b>Trend: ↔</b>
The leadership of the organized bar is active and effective in law reform initiatives that affect the rights and interests of attorneys, but still needs to become more involved in the reform of normative laws and acts affecting the public at large.		

### Analysis/Background:

The Supreme Bar Council (hereinafter “SBC”) is mandated by statute to play an active role in developing and improving the country’s legislation as part of the law reform process. For example, under Article 122.(1).11 of the Attorneys Act, Promulgated State Gazette No. 55 (June 25, 2004) [hereinafter “ATTORNEYS ACT”] the SBC shall “give opinions on draft legislation and prepare proposals aimed at the improvement of the legislation in force.” ATTORNEYS ACT Article 122.(1).11. The ATTORNEYS ACT also specifies that the SBC is to propose to the Chairpersons of the supreme judicial bodies “the adoption of interpretive decisions, and prepare opinions thereon.” *Id.* at art. 122.(1).12. The SBC has been active in fulfilling these statutory obligations. For example, as previously described in the discussion of Factor 22, the SBC played a significant role in the development of the Legal Aid Act, Promulgated SG No. 79 (Oct. 4, 2005), effective (Jan. 1, 2006) in the National Assembly. The SBC also has played a role in the drafting of the new Criminal Procedure Code of Bulgaria, Published SG No. 86 (Oct. 28, 2005), effective (Apr. 29, 2006) [hereinafter “CRIMINAL PROCEDURE CODE”], as well as work on an initiative to implement a new Code of Civil Procedure. Another initiative was the adoption of a declaration at the National Assembly of the bar protesting a proposal to impose the value added tax on attorneys’ fees. The SBC is also planning to promote legislation that would provide more favorable treatment of attorney partnerships under the tax code. As for submitting opinions to supreme judicial bodies, one relevant example was a legal brief submitted by the SBC to the Constitutional Court (technically not within the judiciary), which has jurisdiction to consider constitutional issues that

arise in litigated cases before the courts. The case involved the routine practice of prison officials of opening inmate mail. In its legal statement submitted to the court, the SBC argued that the practice violated the Constitution. The court agreed with the SBC's position and overturned the relevant portion of the offending statute. Dec. No. 4 (April 18, 2006), SG No. 36, (May 2, 2006).

In addition, the Judicial Systems Act, Promulgated SG No. 59 (July 22, 1994), last amended SG No. 86 (Oct. 28, 2005) provides for the participation of the Chairperson or another member of the SBC by expressing opinions in the general meetings of the judicial college of the Supreme Court of Cassation (SCC). JUDICIAL SYSTEMS ACT, Article 85.(4). There is a corresponding provision pertaining to participation in the meetings of the judicial college of the Supreme Administrative Court (SAC). *Id.* at art. 96.(2). Aside from these responsibilities, the Chairperson of the SBC and other bar leaders are called upon to participate in conferences and programs on the steady stream of legal reform issues being debated in country's capital.

Because of more pressing priorities, the SBC has not been able to play a more substantial role in the drafting of normative legislation affecting the public as a whole. This remains an area where the SBC and the attorney profession could make a significant contribution to the rapidly evolving legal infrastructure in Bulgaria.



## LIST OF ACRONYMS

ABA/CEELI:	The American Bar Association's Central European and Eurasian Law Initiative
ADR:	Alternative Dispute Resolution
BCCI:	Bulgarian Chamber of Commerce and Industry
BHC	Bulgarian Helsinki Committee
CCBE:	Council of the Bars and Law Societies of the European Community
CLE:	Continuing Legal Education
COE	Council of Europe
ECHR	European Court of Human Rights
JRI:	Judicial Reform Index
LERI:	Legal Education Reform Index
LPRI	Legal Profession Reform Index
MOI	Ministry of Interior
MOJ:	Ministry of Justice
NAAA:	National Agency for Assessment and Accreditation
NGO:	Non-governmental Organization
NLAB:	National Legal Aid Bureau
PRI:	Prosecutorial Reform Index
SAC:	Supreme Administrative Court
SBC:	Supreme Bar Council
SDC:	Supreme Disciplinary Court
SCC:	Supreme Court of Cassation
SG:	SG (number)
SJC:	Supreme Judicial Council
SSC:	Supreme Supervisory Council
UBJ	Union of Bulgarian Jurists